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code of federal regulations

Agriculture

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PARTS 1200 TO 1499
Revised as of January 1, 1986

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THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

code of federal regulations

Agriculture

7

PARTS 1200 TO 1499

Revised as of January 1, 1986

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1986

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1986), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986.

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THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1944, and Part 1945-end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900-999. All marketing agreements and orders for milk appear in the three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

For this volume Gertrude E. Belton was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

Title 7—Agriculture

(This book contains Parts 1200 to 1499)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—(Continued):

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PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order

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AUTHORITY: Beef Research and Information Act, as amended, Pub. L. 94-294, 94th Cong., approved May 28, 1976, 7 U.S.C. 2901-2918; Cotton Research and Promotion Act, as amended, Pub. L. 89-502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101-2119; Egg Research and Consumer Information Act, as amended, Pub. L. 93-428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701-2718; Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301-4319; Potato Research and Promotion Act, Pub. L. 91-670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611-2627; Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417.

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order

SOURCE: 47 FR 44684, Oct. 8, 1982, unless otherwise noted.

§ 1200.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1200.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Beef Research and Information Act, as amended, Pub. L. 94-294, 94th Cong., approved May 28, 1976, 7 U.S.C. 2901-2918; the Cotton Research and Promotion Act, as amended, Pub. L. 89-502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101-2119; the Egg Research and Consumer Information Act, as amended, Pub. L. 93-428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701-2718; the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301-4319; the Potato Research and Promotion Act, Pub. L. 91-670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611-2627; the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417; and any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) The term "judge" or "administrative law judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or plan or any amendment to it which may be issued pursuant to the Act.

(i) The term "proceeding" means a proceeding forming the basis on which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

(k) The term "board" means the board or council established by the order to administer the program.

§ 1200.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1200.4 Reimbursement of Secretary's expenses.

If provided for in the Act or any amendment thereto, expenses incurred by the Secretary in preparing or amending the order, administering the order, and conducting the referendum shall be reimbursed.

§ 1200.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Except that in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known by the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to those Governors of the States and executive heads of territories and possessions of the United States and the mayor of the District of Columbia that are directly affected by such order.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(2) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1200.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1200.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification

of the transcript pursuant to § 1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1200.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1200.5 (relating to the giving of notice of the hearing): Except that if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances.* (1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and ocupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: Except that the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1200.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the presence of the person who made or prepared the same. The judge shall exercise discretion in determining whether an official publication of such record or document shall be necessary, or whether a copy would be permissible. If permissible such a copy should be attested to by the person having legal custody of it, and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of authenticity, relevancy, and materiality, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice at the hearing may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Except that interested persons shall be given an adequate period of time, at the hearing or subsequent to it, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing

shall be reopened to permit the taking of such evidence.

§ 1200.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1200.9(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1200.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1200.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1200.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions about such issues, including the reasons or basis for such proposed findings; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1200.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1200.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of findings and conclusions, including the reasons or basis for such findings, upon all the material issues of fact, law, or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1200.16: Except that such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1200.16 have been met.

§ 1200.16 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of the Secretary's decision pursuant to § 1200.15: Except that the issuance of such order shall have been approved or favored by eligible voters as required by the applicable Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1200.17 Filing, extension of time, effective date of filing, and computation of time.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is so certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the secretary), or by the Secretary (after the record is transmitted to the secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: Except that when such time expires on a Sunday, or a Federal holiday, such period shall be extended to include the next following business day.

§ 1200.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision thereon shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: Except that procedural matters and status reports shall not be included within the limitation: And except further that an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means any oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1200.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1200.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall then, after due consideration of the record, issue the final decision in the proceeding: Except the Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

PART 1205—COTTON RESEARCH AND PROMOTION

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AUTHORITY: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114, Sec. 7, 80 Stat. 281, 7 U.S.C. 2106.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Orders Under the Cotton Research and Promotion Act

SOURCE: 31 FR 10510, Aug. 5, 1966, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 39 FR 11253, Mar. 27, 1974.

§ 1205.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1205.2 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 7 U.S.C. 2101–2119).

(b) The term "Department" means the U.S. Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or any amendment thereto which may be issued pursuant to the act.

(i) The term "proceeding" means a proceeding upon the basis of which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

[31 FR 10510, Aug. 5, 1966, as amended at 39 FR 11253, Mar. 27, 1974; 41 FR 37092, Sept. 2, 1976]

§ 1205.3 Proposals.

(a) An order may be proposed by any cotton producer organization certified pursuant to section 14 of the act or by any other interested person or persons, including the Secretary. If any person other than the Secretary proposes an order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose an order, he shall sign and cause to be served a notice of hearing, as provided herein.

§ 1205.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: *Provided,* That, in the case of hearings on amendments to orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each cotton association known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in his discretion, are best calculated to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and Possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine should be notified.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1205.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1205.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 1205.7 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1205.16(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 1205.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1205.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1205.4 (relating to the giving of notice of the hearing): *Provided,* That, if change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the presiding officer, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge officer may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

(ii) In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the presiding officer, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record his designation as judge the notice of hearing as filed with the Office of the Federal Register, and the affidavit or certificate of the giving of notice or the determination provided for in § 1205.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* (i) The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(ii) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(iii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iv) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* (i) If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript.

(ii) Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That, interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1205.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments of briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1205.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 1205.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 1205.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1205.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons;

and (3) an appropriate proposed order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 1205.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 1205.14 Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include:

(a) A statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record,

(b) A ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record,

(c) A ruling upon each exception filed by interested persons and

(d) Either (1) a denial of the proposal to issue an order or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1205.15: *Provided,* That such order shall not be executed, issued or made effective until and unless the Secretary determines that the requirements of § 1205.15 have been met.

§ 1205.15 Issuance of order.

(a) The Secretary shall, if he finds that it will tend to effectuate the purposes of the act, issue and make effective the order, if any, which was filed as a part of his decision pursuant to § 1205.14: *Provided,* That the issuance of such order shall have been approved or favored by producers as required by section 8 of the act.

(b) Effective date of order: No order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor.

(c) Notice of issuance: After issuance of an order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1205.16 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any document, or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Extensions of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Saturdays, Sundays, and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Saturday, Sunday or legal holiday, such period shall be extended to include the next following business day.

[31 FR 10510, Aug. 5, 1966, as amended at 39 FR 11253, Mar. 27, 1974]

§ 1205.17 Discussion of issues, etc., of proceeding prohibited.

Except as may be provided otherwise in this subpart, no officer or employee of the Department shall, following the close of the hearing in an order proceeding and prior to the issuance of an order therein, discuss the issues, merits, or evidence involved in the proceeding with any person interested in the result of the proceeding or with any representative of such person: *Provided, however,* That the provisions of this section shall not preclude an officer or employee who has been duly assigned to, or who has supervision over, a proceeding from discussing with interested persons or their representatives matters of procedure in connection with such proceeding. Insofar as the provisions of this section are inconsistent with the provisions of Regulation 1544 of the publication entitled "Regulations of the U.S. Department of Agriculture," the provisions of this section shall prevail.

§ 1205.18 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1205.19 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When he so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided,* That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Orders

§ 1205.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

[32 FR 2698, Feb. 9, 1967]

§ 1205.51 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 7 U.S.C. 2101-2119);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any person who is subject to an order, or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 12(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) [Reserved]

(n) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or basis thereof, (2) order, (3) rulings on findings, conclusions and order submitted by the parties;

(o) The term "petition" includes an amended petition.

[32 FR 2698, Feb. 9, 1967, as amended at 39 FR 11254, Mar. 27, 1974; 41 FR 37092, Sept. 2, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.52 Institution of proceeding.

(a) *Filing and service of petition.* Any person desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from orders shall be governed by §§ 900.52 (excluding paragraph (a) of § 900.52) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders), and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference.

[32 FR 2698, Feb. 9, 1967]

Subpart—Procedure for the Conduct of Referenda in Connection With Cotton Research and Promotion Orders

SOURCE: 31 FR 14438, Oct. 9, 1966, unless otherwise noted.

§ 1205.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a cotton research and promotion order, or the termination or suspension of such an order, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) "Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 7 U.S.C. 2101-2119).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead and "Department" means the U.S. Department of Agriculture.

(c) "Consumer and Marketing Service" means the Agricultural Marketing Service of the Department.

(d) "Agricultural Stabilization and Conservation Service", also referred to as ASCS, means the Agricultural Stabilization and Conservation Service of the Department.

(e) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) "Deputy Administrator" means the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service.

(g) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State Committee.

(h) "County committee" means the persons elected within a county as the county committee, pursuant to the regulations governing the selection and functions of the Agricultural Stabilization and Conservation county and community committees.

(i) "County executive director" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service county office, or the person acting in such capacity.

(j) "State executive director" means the person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service State Office, or the person acting in such capacity.

(k) "Order" means the order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(l) "Representative period" means the period designated by the Secretary pursuant to section 8 of the act.

(m) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise, or legal entity, and wherever applicable, a State, political subdivision of a State, the Federal Government, or any agency thereof.

(n) "Upland cotton" means any cotton other than extra long staple cotton.

(o) "Engaged in the production." Except for a landlord of a cash rent tenant, each person sharing in an upland cotton crop, or proceeds thereof, on a farm as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant shall be considered engaged in the production of such crop. In addition, any person who would have shared in an upland cotton crop, or proceeds thereof, but who, because of a natural disaster or other condition beyond his control, was prevented from planting or harvesting the crop shall be considered engaged in the production of such crop provided the person qualifies for a disaster payment under the ASCS upland cotton disaster payment program.

(p) "Producer" means any person engaged in the production of upland cotton.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976; 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) *Agricultural Marketing Service.* The Administrator shall:

(1) Determine the referendum period.

(2) Give reasonable advance notice of the referendum (i) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the upland cotton producing areas, announcing the dates, places, or methods of voting, and other pertinent information, and (ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to ASCS. The ballot (i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and (ii) may provide for recording the total amount of upland cotton produced by the producer during the representative period.

(4) Make available to producers through ASCS county committees instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of upland cotton produced shall be determined by the office of the county committee on the basis of the acreage planted or, in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the county committee, and the established yield for ASCS program payment purposes: *Provided,* That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yields on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided,* That only farms for which records are maintained by the ASCS county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on any additional farm or farms.

(b) *Agricultural Stabilization and Conservation Service.* Except for the functions specified in paragraph (a) of this section, the Deputy Administrator shall be in charge of and responsible for conducting each referendum. Each State committee shall be in charge of and responsible for conducting such referendum in its State. Each county committee shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each committee to conduct each referendum in a fair, unbiased and impartial manner in accordance with the regulations in this subpart.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976; 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.203 Voting eligibility.

(a) *Special eligibility requirements.* Each person who was engaged in the production of upland cotton during the representative period shall be eligible to vote in a referendum.

(b) *General eligibility requirements.* (1) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming operations will be entitled to one vote even though that person is interested in an organization such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of upland cotton will be eligible to vote in such fiduciary capacity if, in such capacity, that person qualifies as an eligible voter.

In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is also administrator of estate Y, he or she may cast another ballot as administrator of estate Y.

(2) Where a group of several persons, such as husband, wife, and children, or unrelated individuals, are engaged in the production of upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecopper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharcropping agreement, both are eligible to vote. This is true whether the rental or sharercopping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association, or other legal entity, may cast its vote.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.204 Voting.

(a) *Place of voting.* The ASCS county office serving the county in which the producer's farm is located shall be his polling place.

(b) *Register of eligible voters.* The county committee shall establish a register of known eligible voters prior to the referendum.

(c) *Mailing of ballot to eligible voters.* The county committee shall furnish each eligible voter a ballot suitable for mailing back to the office of the county committee. If an eligible voter does not receive a ballot, one may be obtained during the referendum period from the office of the county committee for the county in which the voter is eligible.

(d) *Returning ballot to office of the county committee.* Each person to whom a ballot is issued by mail or in person may vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the office of the county committee for the county in which the voter is eligible to vote. In order to be eligible for tabulation by the county committee, voted ballots must be received by the county committee of the county in which the voter is eligible to vote during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if (1) in the case of the ballot delivered to the county committee, it was received in the office prior to the close of the work day on the final day of the referendum period, or (2) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the county office prior to the start of canvassing the ballots.

(e) *Placing of ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by the county committee, envelopes containing ballots received at the ASCS county office during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by the county executive director. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10931, Mar. 19, 1985]

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the county office on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least a member of the county committee and shall be open to the public. The canvassing and ballots shall be handled in such a manner that no member of the public may see how any person voted in the referendum. The county committee member shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to (1) the number of eligible voters favoring the order and, where necessary, the amount of upland cotton represented by them, (2) the number of eligible voters disapproving the order and, where necessary, the amount of upland cotton represented by them, (3) the number of ballots cast by voters found to be ineligible to vote in the referendum, and (4) number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots.* A ballot shall be considered as a spoiled ballot if (1) it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or (2) it does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots.* A ballot may be challenged by the member of the county committee. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the county committee member as to the eligibility of the voter to vote in the referendum.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976; 50 FR 10932, Mar. 19, 1985]

§ 1205.206 Reporting results of referendum.

(a) Each county committee shall transmit a written county summary of ballots showing the results of the referendum in its county to its State committee.

(b) Each State committee shall transmit a written summary of the referendum results from the county committees within its State to the Director, Cotton Division, Agricultural Marketing Service, Washington, DC 20250, and maintain one copy of the summary in the office of the State committee where it will be available for public inspection for a period of 5 years following the end of the referendum period.

(c) The Director of the Cotton Division shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publicly proclaim the results of the referendum.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.207 Challenge of correctness of county summary of ballots.

The State committee shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided,* That no dispute or challenge shall be investigated unless it is brought to the attention of the State committee within 3 days after receipt by the State committee of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records by county committee.

The county committee shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date, and the names of the county and State, and place them under lock and key in a safe place under the custody of the county executive director for a period of 45 calendar days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State committee, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the county committee.

[31 FR 14438, Oct. 9, 1966, as amended at 41 FR 51030, Nov. 19, 1976]

§ 1205.209 Confidential information.

All ballots cast and the contents thereof shall be treated as confidential.

§ 1205.210 Additional instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and county committees in conducting a referendum. Such additional instructions may include procedures for county and State committees to report and announce the results of the preliminary count of the votes in the county and the State.

Subpart—Cotton Research and Promotion Order

SOURCE: 31 FR 16758, Dec. 31, 1966, unless otherwise noted.

DEFINITIONS

§ 1205.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 *et seq.*, 90 Stat. 991; 7 U.S.C. 2101-2118).

[42 FR 4813, Jan. 26, 1977]

§ 1205.303 Person.

"Person" means any individual, partnership, corporation, association, or any other entity.

§ 1205.304 Cotton.

"Cotton" means all upland cotton harvested in the United States, and except as used in §§ 1205.308, 1205.331, and 1205.332, includes cottonseed of such cotton and the products derived from such cotton and its seed.

§ 1205.305 Fiscal period.

"Fiscal period" is the 12-month budgetary period and means the calendar year unless the Cotton Board, with the approval of the Secretary, selects some other 12-months budgetary period.

§ 1205.306 Cotton Board.

"Cotton Board" means the administrative body established pursuant to § 1205.318.

§ 1205.307 Producer.

"Producer" means any person who shares in a cotton crop actually harvested on a farm, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

§ 1205.308 Handler.

"Handler" means any person who handles cotton, including the Commodity Credit Corporation.

§ 1205.309 Handle.

"Handle" means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

§ 1205.310 United States.

"United States" means the 50 States of the United States of America.

§ 1205.311 Cotton-producing State

"Cotton-producing State" means each of the following States and combinations of States:

Alabama-Florida; Arizona; Arkansas; California-Nevada; Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North

Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas.

§ 1205.312 Marketing.

"Marketing" includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

§ 1205.313 Cotton-producer organization.

"Cotton-producer organization" means any organization which has been certified by the Secretary pursuant to § 1205.337.

§ 1205.314 Contracting organization or association.

"Contracting organization or association" means the organization or association with which the Cotton Board has entered into a contract or agreement pursuant to § 1205.328(c).

§ 1205.315 Cotton-producing region.

"Cotton-producing region" means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

§ 1205.316 Marketing year.

"Marketing year" means a consecutive 12-month period ending on July 31.

§ 1205.317 Part and subpart.

"Part" means the cotton research and promotion order and all rules, regulations and supplemental orders issued pursuant to the act and the order, and the aforesaid order shall be a "subpart" of such part.

COTTON BOARD

§ 1205.318 Establishment and membership.

There is hereby established a Cotton Board composed of representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing State, as certified pursuant to § 1205.337, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible producer organizations, from nominations made by producers in the manner authorized by the Secretary. Each cotton-producing State shall be represented by at least one member and by an additional member for each 1 million bales or major fraction (more than one-half) thereof of cotton produced in the State and marketed above 1 million bales during the period specified in the regulations for determining Board membership.

§ 1205.319 Term of office.

The members of the Board and their alternates shall serve for terms of 3 years, but the initial members and alternates shall be selected to represent the cotton-producing States in each of the cotton-producing regions for terms expiring on December 31, 1968, 1969, or 1970, so that, as nearly as practicable, the terms of one-third of the members and their alternates from cotton-producing States in any such region expire each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

§ 1205.320 Nominations.

All nominations authorized under § 1205.318 shall be made within such period of time and in such manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing State, as certified pursuant to § 1205.337, shall caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be selected to represent the cotton producers of such cotton-producing State. If joint agreement is not reached with respect to the nominees for any such position each such organization may nominate two qualified persons for any position on which there was no agreement.

§ 1205.321 Selection.

From the nominations made pursuant to §§ 1205.318 and 1205.320 the Secretary shall select the members of the Board and an alternate for each such member on the basis of the representation provided for in §§ 1205.318 and 1205.319.

§ 1205.322 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1205.323 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.318, 1205.320, and 1205.321.

§ 1205.324 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and qualified. In the event both a member of the Board and his alternate are unable to attend a Board meeting, the Board may designate any other alternate member from the same cotton-producing State or region to serve in such member's place and stead at such meeting.

§ 1205.325 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

§ 1205.326 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1205.327 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler responsible for collecting the producer assessments authorized by § 1205.331, which designation may be of different handlers or classes of handlers to recognize differences in marketing practices in any State or area;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977]

§ 1205.328 Duties.

The Board shall have the following duties:

(a) To select from among its members a chairman and such other officers as may be necessary for the conduct of its business, and to define their duties;

(b) To appoint or employ such persons as it may deem necessary and to determine the compensation and to define the duties of each;

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.329, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the costs thereof with funds collected pursuant to § 1205.331, with an organization or association whose governing body consists of cotton producers selected by the cotton producer organizations certified by the Secretary under § 1205.337, in such manner that the producers of each cotton-producing State will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such State bears to the total cotton marketed by the producers of all cotton-producing States, subject to adjustments to reflect lack of participation in the program by reason of refunds under § 1205.332. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(d) To review and submit to the Secretary any research and promotion plans or projects which have been developed and submitted to it by the contracting organization or association, together with its recommendations with respect to the approval thereof by the Secretary;

(e) To submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of advertising and promotion and research and development projects as estimated in the budget or budgets submitted to it by the contracting organization or association, with the Board's recommendations with respect thereto;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit to the Secretary;

(h) To give the Secretary the same notice of meetings of the Board as is given to members in order that his representative may attend such meetings;

(i) To act as intermediary between the Secretary and any producer or handler;

(j) To submit to the Secretary such information as he may request.

RESEARCH AND PROMOTION

§ 1205.329 Research and promotion.

The Cotton Board shall in the manner prescribed in § 1205.328(c) establish or provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products, which plans or projects shall be directed toward increasing the general demand for cotton or its products in accordance with section 6(a) of the act;

(b) The establishment and carrying on of research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products in accordance with section 6(b) of the act, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient.

EXPENSES AND ASSESSMENTS

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

[42 FR 4813, Jan. 26, 1977]

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of four tenths of one percent of the value of cotton: *Provided,* That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

[42 FR 4813, Jan. 26,1977]

§ 1205.332 Producer refunds.

Any cotton producer against whose cotton any assessment is made under the authority of the act and collected from him and who is not in favor of supporting the research and promotion program as provided for in this subpart shall have the right to demand and receive from the Cotton Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought. Any such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time period shall give the producer at least 90 days from the date of collection to submit the refund form to the Board. Any such refund shall be made within 60 days after demand therefor.

§ 1205.333 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1205.334 Reports.

Each handler subject to this subpart may be required to report to the Cotton Board periodically such information as is required by regulations, which information may include but not be limited to, the following:

(a) Number of bales handled;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom he has collected the assessments on each bale handled;

(d) Date collection was made on each bale handled.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977]

§ 1205.335 Books and records.

Each handler subject to this subpart shall maintain and make available for inspection by the Cotton Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the marketing year of their applicability.

§ 1205.336 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.336 shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers subject to this subpart, which statements do not identify the information furnished by any person, or (2) the publication by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board.

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

§ 1205.337 Certification of cotton producer organization.

Any cotton producer organization within a cotton-producing State may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent such State on the Cotton Board. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Geographic territory within the State covered by the organization's active membership;

(b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;

(c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its cotton farmer membership consists of a sufficiently large number of the cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.337 will be certified by the Secretary, and his determination as to eligibility is final.

MISCELLANEOUS

§ 1205.338 Suspension and termination.

(a) The Secretary will, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of cotton producers voting in the referendum approving this subpart, to determine whether cotton producers favor the termination or suspension of this subpart, and he shall suspend or terminate such subpart at the end of the marketing year whenever he determines that its suspension or termination is approved or favored by a majority of the producers of cotton voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of cotton, and who produced more than 50 per centum of the volume of the cotton produced by the cotton producers voting in the referendum.

§ 1205.339 Proceedings after termination.

(a) Upon the termination of this subpart the Cotton Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Cotton Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.328(c); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this § 1205.339.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this § 1205.339 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the cotton research or promotion programs hitherto authorized.

§ 1205.340 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder, or (b) release or extinguish any violation of this subpart or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1205.341 Personal liability.

No member or alternate member of the Cotton Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1205.342 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Members of Cotton Board

§ 1205.401 Definitions.

(a) *Cotton Division.* "Cotton Division" means the Cotton Division of the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Director.* "Director" means the Director of the Cotton Division.

[32 FR 1084, Jan. 31, 1967, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing State is entitled to be represented by more than one member of the Cotton Board pursuant to § 1205.318, average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years shall be used as the criteria for determination of such additional members.

(b) All members appointed from a State shall be entitled to serve a full 3-year term even though it is determined in a subsequent year that a State should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(c) Each year the Director shall, based on the average annual production of upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton-producer organizations in each cotton-producing State of the number of vacancies to be filled on the Cotton Board.

[50 FR 10932, Mar. 19, 1985]

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing State of the location, date, and time of the caucus of such organizations pursuant to § 1205.320 for the purposes of making nomination for members and alternate members of the Cotton Board. The Director will designate a representative from the Cotton Division to attend the caucus meeting in each State. Each eligible cotton-producer organization within each cotton-producing State shall be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. Such representative shall be (1) a cotton producer and resident of such State, (2) an officer or member of the Board of Directors of such association, and (3) duly and unqualifiedly authorized in writing by such association to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting in each State shall ascertain the qualifications and eligibility of each representative of a cotton-producer organization to participate in said meeting and to make nominations.

(b) Each caucus shall be conducted as follows:

(1) The representative from the Cotton Division shall act as temporary chairman and shall explain the procedure for nominations and the duties of the Cotton Board.

(2) The representatives in attendance from the certified cotton producer organizations shall then select a chairman and a secretary.

(3) At each caucus there shall be presented for nomination and there shall be nominated not less than the number of nominees required under the provisions of §§ 1205.318, 1205.320, and 1205.402.

[32 FR 1084, Jan. 31, 1967, as amended at 50 FR 10932, Mar. 19, 1985]

Subpart—Cotton Board Rules and Regulations

SOURCE: 42 FR 35974, July 13, 1977, unless otherwise noted.

DEFINITIONS

§ 1205.500 Terms defined.

As used throughout this subpart, unless the context otherwise requires, the following terms shall mean:

(a) "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) "Cotton Board" means the administrative body established pursuant to the Cotton Research and Promotion Order.

(c) "CCC" means the Commodity Credit Corporation.

(d) "Current value of Cotton" means the gross price per pound of lint cotton received by the producer as shown on the producers' settlement document before weight penalties, buyer's commission or brokerage fees, marketing fees, the $1 per bale cotton research and promotion assessment, picking charges, ginning charges, warehouse receiving charges, warehouse storage charges, transportation charges or any other deductions are made.

(e) "Form A" means Cotton Producer's Note, Form CCC Cotton A.

(f) "Gin code number" means the identification number assigned to each cotton gin by the Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(g) "Handle" means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

(h) "Handler" means any person who handles cotton, including CCC.

(i) "Marketing" means any sale of cotton, or the pledging of cotton to CCC as collateral for a price support loan.

(j) "Marketing year" means a consecutive 12-month period ending on July 31.

(k) "Person" means any individual, partnership, corporation, association, or any other entity, whether governmental or private.

(l) "Producer" means any person who owns or shares in a cotton crop (or in the proceeds thereof) as landowner, landlord, tenant, or sharecropper.

(m) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(n) "PIK cotton" means any upland cotton made available to a producer under the payment-in-kind program (the Agricultural Stabilization and Conservation Service's Special Program of Payment-in-Kind for Acreage Diversion for certain 1983 crops) and shall be considered as original production and subject to any assessments required by the Act and Order.

[42 FR 35974, July 13, 1977, as amended at 48 FR 48452, Oct. 19, 1983; 50 FR 10932, Mar. 19, 1985]

GENERAL

§ 1205.505 Communication.

All reports, requests, and applications for refunds and communications in connection with the cotton research and promotion order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tenn. 38159.

ASSESSMENTS

§ 1205.510 Levy of assessment.

(a) An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of upland cotton that is produced from cotton harvested and ginned on and after June 10, 1967 except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(b) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided in paragraph (a) of this section, is hereby levied on each bale of upland cotton harvested and ginned on and after July 24, 1985 except cotton consumed by any governmental agency from its own production. The supplemental assessment shall be levied at the rate of six-tenths of one percent of: (1) The current value of cotton multiplied by the number of pounds of lint cotton or (2) the current value of cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

Current value (cents per pound)	*Supplemental assessment, dollars per bale*
.00 to 9.99	.15
10.00 to 19.99	.45
20.00 to 29.99	.75
30.00 to 39.99	1.05
40.00 to 49.99	1.35
50.00 to 59.99	1.65
60.00 to 69.99	1.95
70.00 to 79.99	2.25
80.00 to 89.99	2.55
90.00 to 99.99	2.85
100.00 to 109.99	3.15
110.00 to 119.99	3.45

[1] Assessment is calculated on 6/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb bale and converted to a fixed amount per bale.

(c) Each marketing year the collecting handler must select one of the two options of collecting the supplemental assessment as provided in paragraph (b) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 50 FR 30133, July 24, 1985]

§ 1205.511 Payment and collection.

(a) The $1 per bale assessment shall be paid by the producer of the cotton to the collecting handler designated in § 1205.512.

(b) The supplemental assessment shall be paid by the producer of the cotton to the collecting handler designated in § 1205.513.

(c) If more than one producer shares in the proceeds received from a bale, each such producer is obligated to pay that portion of the assessments which are equivalent to their proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.514.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985]

§ 1205.512 Collecting handlers and time of collection of $1 per bale assessment.

Collecting handlers and the time of collecting the $1 per bale assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the assessment when it makes disbursement based on the Form A loan documents. The producer's copy

of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the assessment and shall constitute the producer's receipt for payment of the assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(d) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the assessment. When a bale is ginned that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the assessment and shall give each producer a receipt indicating the producer's proportionate share of the assessment payment.

(e) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the $1 per bale assessment.

(f) Any person who consumes domestically or exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the assessment to the Cotton Board at the time the cotton is consumed or exported.

(g) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d) or (e) of this section shall be the collecting handler for such cotton. Such handler shall collect the assessment at the time such handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer, or his estate, or the person acting on behalf of creditors, shall be considered the producer of the cotton for the purposes of this section and § 1205.520.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985]

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

Collecting handlers and the time of collecting the supplemental assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the supplemental assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the supplemental assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. Supplemental assessments due on any subsequent cash advances, payments, or credits to the producer's account shall be collected by the handler at the time final settlement is made on the cotton. The handler shall give the producer a receipt each time a supplemental assessment is collected.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the supplemental assessment when it makes disbursement based on the Form A loan value of cotton. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(d) Any person who (1) purchases a producer's equity in cotton tendered to CCC for Form A loan or (2) purchases cotton that a producer has redeemed from the Form A loan, shall be the collecting handler for the portion of the total supplemental assessment not collected under paragraph (c) of this section. The handler shall give the producer a receipt indicating payment of that portion of the supplemental assessment.

(e) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the supplemental assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the supplemental assessment. When a bale is ginned and baled that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the supplemental assessment and shall give each producer a receipt indicating the producer's proportionate share of the supplemental assessment payment.

(f) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(g) Any person who consumes domestically cotton of that person's own production shall be the collecting handler for such cotton. The handler shall pay the supplemental assessment at the time of consumption on the basis of a market value determined in consultation with the Cotton Board.

(h) Any person who exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the supplemental assessment on the basis of the current value of cotton as reflected on the export settlement document.

(i) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d), (e), or (f) of this section shall be the collecting handler for such cotton. Such handler shall collect the supplemental assessment at the time the handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(j) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer of the cotton for the purposes of this section and § 1205.520.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985]

§ 1205.514 Remittance to Cotton Board.

Each collecting handler shall transmit assessments and reports on assessments to the Cotton Board as follows:

(a) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last day of the month.

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each collecting handler shall prepare a separate report, each reporting period, for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board within 10 days after the close of the reporting period and shall contain the following information:

(1) Date of report.

(2) Reporting period covered by report.

(3) Gin code number or for PIK cotton, county in which PIK cotton was earned.

(4) Name and address of handler.

(5) Listing of all producers from whom the handler was required to collect the assessments, their addresses, and total number of bales and total assessments collected and remitted for each producer.

(6) Date of last report remitting assessments to the Cotton Board.

(c) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (b) of this section. All remittances sent to the Cotton Board by collecting handlers shall be by check, draft, or money order payable to the order of the "Cotton Board". All remittances shall be received subject to collection and payment at par.

(Approved by the Office of Management and Budget under control number 0581-0115)

[42 FR 35974, July 13, 1977, as amended at 48 FR 48452, Oct. 19, 1983; 49 FR 8420, Mar. 7, 1984; 50 FR 10933, Mar. 19, 1985]

§ 1205.515 Receipts for payment of assessments.

Each collecting handler who is required by § 1205.512 and § 1205.513 to give the producer a receipt showing payment of cotton research and promotion assessments shall provide the producer with an invoice or settlement sheet for the cotton. Such document shall serve as a receipt shall contain the following information:

(a) Name and address of collecting handler.

(b) Gin code number of gin at which cotton was ginned or county in which PIK cotton was earned.

(c) Name and address of producer who paid assessment.

(d) Number of bales on which assessment was paid.

(e) Gross price per pound received by the producer.

(f) Total assessments paid by the producer.

(g) Date on which assessment was paid by producer.

(Approved by the Office of Management and Budget under control number 0581-0115)

[42 FR 35974, July 13, 1977, as amended at 48 FR 48452, Oct. 19, 1983; 49 FR 8420, Mar. 7, 1984]

REFUNDS

§ 1205.520 Procedure for obtaining refund.

Each cotton producer against whose cotton any assessments are made and collected pursuant to this subpart may obtain a refund of such assessment only by following the procedures prescribed in this section.

(a) *Application form.* A producer shall obtain a refund application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the producer's signature or the producer's properly-witnessed mark.

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board within 90 days from the date the assessments were paid on the cotton by such producer. The refund application shall show (1) producer's name and address; (2) collecting handler's name and address; (3) gin code number; (4) number of bales on which refund is requested; (5) total amount to be refunded; (6) date or inclusive dates on which assessments were paid;

and (7) the producer's signature or properly witnessed mark. Where more than one producer shared in the assessment payment on cotton, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of all such producers. The refund application form shall bear the signature or properly witnessed mark of each producer seeking a refund.

(c) *Proof of payment of assessment.* The receipt given to the producer by the collecting handler, or a copy thereof, or such other evidence satisfactory to the Cotton Board, shall accompany the producer's refund application. Within 60 days from the date the properly-executed application for refund is received by the Cotton Board, the Cotton Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form. Receipts submitted with refund applications shall not be returned to the producer.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10933, Mar. 19, 1985]

WAREHOUSE RECEIPTS

§ 1205.525 Entry of gin code number.

For each bale of cotton ginned on or after June 10, 1967, the warehouse that first receives the bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

REPORTS AND RECORDS

§ 1205.530 Gin reports and reporting schedule.

(a) *Gin reports.* Each year each cotton gin in the United States shall submit reports to the Cotton Board on forms or certificates made available or approved by the Cotton Board as follows:

(1) *End-of-season report.* Except as provided in paragraph (a)(2) of this section, each gin shall report to the Cotton Board an alphabetical listing of producer names, their addresses, and the number of bales ginned for each such producer during its ginning season.

(2) *Certificate in lieu of end-of-season report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.514, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

(b) *Reporting schedule.* The schedule for submitting gin reports is as follows:

(1) Each gin that completes ginning operations prior to January 16 shall make a report to the Cotton Board within 10 days after completion of ginning.

(2) Each gin that operates on or after January 16 will make a report to the Cotton Board not later than January 25 covering bales ginned through January 15.

(3) Each gin that operates after January 15 shall make a supplemental report to the Cotton Board within 10 days after the close of ginning operations covering bales ginned after January 15.

§ 1205.531 Records.

Each handler required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

§ 1205.532 Retention period for reports and records.

Each handler required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability: (a) One copy of each report made to the Cotton Board; and (b) such books and records as are necessary to verify such reports.

§ 1205.533 Availability of reports and records.

Each handler required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

CONFIDENTIAL INFORMATION

§ 1205.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers shall be kept confidential in the manner and to the extent provided for in § 1205.336.[1]

Subpart—Fiscal Period [Reserved]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

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[1] Section 1205.336 is contained in the Cotton Research and Promotion Order.

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AUTHORITY: Title III of Pub. L. 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627, as amended.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate a Plan Under the Potato Research and Promotion Act

AUTHORITY: 84 Stat. 2040; 7 U.S.C. 608c.

SOURCE: 36 FR 3194, Feb. 19, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 39 FR 786, Jan. 3, 1974.

§ 1207.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1207.2 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means the Potato Research and Promotion Act, Title III of Pub. L. 91-670, 91st Congress, approved January 11, 1971 (84 Stat. 2041).

(b) The term "Department" means the U.S. Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "plan" means any plan or any amendment thereto which may be issued pursuant to the act.

(i) The term "proceeding" means a proceeding upon the basis of which a plan may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

[36 FR 3194, Feb. 19, 1971, as amended at 37 FR 8059, Apr. 25, 1972; 39 FR 786, Jan. 3, 1974]

§ 1207.3 Proposals.

(a) A plan may be proposed by potato producers or by any other interested person or persons, including the Secretary. If any person other than the Secretary proposes a plan, he shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed plan will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed plan will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a plan, he shall sign and cause to be served a notice of hearing, as provided herein.

§ 1207.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the plan is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed plan or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed plan may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: *Provided,* That, in the case of hearings on amendments to a plan, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each potato association known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in his discretion, are best calculated to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of the 48 contiguous States of the United States.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraph (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1207.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1207.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 1207.7 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1207.16(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 1207.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1207.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1207.4 (relating to the giving of notice of the hearing): *Provided,* That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

(ii) In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record his designation as judge, the notice of hearing as filed with the Office of the FEDERAL REGISTER, and the affidavit or certificate of the giving of notice or the determination provided for in § 1207.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* (i) The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(ii) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(iii) When necessary in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iv) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to reply.

(2) *Objections.* (i) If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript.

(ii) Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data of-

fered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materially of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That, interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the presiding officer's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1207.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the plan. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1207.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 1207.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 1207.11 [Reserved]

§ 1207.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed plan effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed plan, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed plan.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 1207.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 1207.14 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a plan or (2) if the findings upon the record so warrant, a plan, the provisions of which shall be set forth and such plan shall be complete except for its effective date and any determinations to be made under § 1207.15: *Provided,* That such plan shall not be executed, issued or made effective until and unless the Secretary determines that the requirements of § 1207.15 have been met.

§ 1207.15 Issuance of plan.

(a) The Secretary shall, if he finds that it will tend to effectuate the purposes of the act, issue and make effective the plan, if any, which was filed as a part of his decision pursuant to § 1207.14: *Provided,* That the issuance of such plan shall have been approved or favored by procedures as required by section 314 of the act.

(b) Effective date of plan: No plan shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the plan, fixes an earlier effective date therefor.

(c) Notice of issuance: After issuance of a plan, such plan shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1207.16 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk, shall be filed in quadruplicate. Any document, or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Extensions of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

§ 1207.17 Discussion of issues, etc., of proceeding prohibited.

Except as may be provided otherwise in this subpart, no officer or employee of the Department shall, following the close of the hearing in a plan proceeding and prior to the issuance of a plan, discuss the issues, merits, or evidence involved in the proceeding with any person interested in the result of the proceeding or with any representative of such person: *Provided, however,* That the provisions of this section shall not preclude an officer or employee who has been duly assigned to, or who has supervision over, a proceeding from discussing with interested persons or their representatives matters of procedure in connection with such proceeding. Insofar as the provisions of this section are inconsistent with the provisions of Regulation 1544 of the publication entitled "Regulations of the U.S. Department of Agriculture," the provisions of this section shall prevail.

§ 1207.18 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, plans, and other documents which relate to the administration of any plan and which the Secretary is required to issue or to approve.

§ 1207.19 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When he so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and plans, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceedings: *Provided,* That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Procedure for the Conduct of Referenda in Connection With Potato Research and Promotion Plan

AUTHORITY: 84 Stat. 2041; 7 U.S.C. 608c.

SOURCE: 36 FR 25147, Dec. 29, 1971, unless otherwise noted.

§ 1207.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a potato research and promotion plan, or the continuance, termination or suspension of such a plan, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1207.201 Definitions.

(a) "Act" means the Potato Research and Promotion Act, Title III of Pub. L. 91-670, 91st Congress, approved January 11, 1971 (84 Stat. 2041).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and "Department" means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Plan" means the plan (including an amendment to a plan) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 314 of the act.

(g) "Person" means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of potatoes for market and the authority to transfer title to the potatoes so produced.

(h) "Producer" means any person defined as a producer in the plan, engaged in the growing of 5 or more acres of potatoes and who: (1) Owns and farms land, resulting in his ownership of the potatoes produced thereon; (2) rents and farms land, resulting in his ownership of all or a portion of the potatoes produced thereon; or (3) owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the potatoes produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the potatoes grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[36 FR 25147, Dec. 29, 1971, as amended at 37 FR 8059, Apr. 25, 1972]

§ 1207.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that in a land-lord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in the referendum.

(b) Proxy voting is not authorized but an officer or employee of a corporate producer, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

§ 1207.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the acreage of potatoes produced by the voting producer during the representative period, and (3) the total volume in hundredweight of potatoes produced during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of a plan, a summary of the terms and conditions of the plan: *Provided*, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explain-

ing the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1207.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1207.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1207.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1207.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

AUTHORITY: 84 Stat. 2041; 7 U.S.C. 608c.

§ 1207.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

[36 FR 25148, Dec. 29, 1971]

§ 1207.251 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "act" means the Potato Research and Promotion Act, Pub. L. 91-670, 91st Congress, approved January 11, 1971 (84 Stat. 2041);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in his stead;

(d) The term "administrative law judge" or "judge" means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(f) The term FEDERAL REGISTER means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "plan" means any plan or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any individual, partnership, corporation, association, or other entity subject to a plan or to whom a plan is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under a plan;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 311(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) [Reserved]

(n) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(o) The term "petition" includes an amended petition.

[36 FR 25148, Dec. 29, 1971, as amended at 37 FR 8059, Apr. 25, 1972; 39 FR 786, Jan. 3, 1974]

§ 1207.252 Institution of proceeding.

(a) *Filing and service of petition.* Any person subject to a plan desiring to complain that any plan or any provision of any such plan or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the plan, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the plan or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the plan, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition.

(c) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from plans shall be governed by §§ 900.52(c) through 900.71 (excluding § 900.70) of this title (Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders except that all references to marketing orders shall mean plan), and as may hereafter be amended, and the same are incorporated herein and make a part hereof by reference.

[36 FR 25148, Dec. 29, 1971, as amended at 39 FR 786, Jan. 3, 1974]

Subpart—Potato Research and Promotion Plan

SOURCE: 37 FR 5008, Mar. 9, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1207.302 Act.

"Act" means the Potato Research and Promotion Act (title III of Pub. L. 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041).

§ 1207.303 Plan.

"Plan" means this potato research and promotion plan issued by the Secretary pursuant to the act.

§ 1207.304 Person.

"Person" means any individual, partnership, corporation, association, or other entity.

§ 1207.305 Producer.

"Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

§ 1207.306 Potatoes.

"Potatoes" means any or all varieties of Irish potatoes grown by producers in the 48 contiguous States of the United States.

§ 1207.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

§ 1207.308 Handler.

"Handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

§ 1207.309 Board.

"Board" means the National Potato Promotion Board, hereinafter established pursuant to § 1207.320.

§ 1207.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12-month period from July 1 through June 30 of the following year or such other period which may be approved by the Secretary.

§ 1207.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising or promotion programs or projects developed by the Board pursuant to § 1207.335.

NATIONAL POTATO PROMOTION BOARD

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the "Board," composed of producers and the public as selected by the Secretary. The public representative to the Board shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary. Producer members shall be selected from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322.

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member.

However, each State shall initially be entitled to at least one member.

(c) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board member selected by the Secretary will represent both States but his voting power under § 1207.325 shall not be increased.

(d) The Secretary, upon recommendation of the Board, may establish, through rule making procedure, districts or groups of States in order to change the representation requirements for membership on the Board. In such event the voting power of members under § 1207.325 would be based upon the total production within the new district or group of States.

(e) In the event that producer Board members fail to select a public representative nominee, the Secretary may appoint such a member.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 49 FR 31390, Aug. 7, 1984]

§ 1207.321 Term of office.

(a) The term of office of Board members shall be 3 years, beginning July 1, or such other beginning date as may be approved pursuant to regulations.

(b) The terms of office of the Board's initial members shall be so determined that approximately one-third of the terms will expire each year, i.e., the terms of approximately one-third will be for 1 year, one-third for 2 years and one-third for 3 years.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve for more than two full successive terms.

§ 1207.322 Nominations and selection.

The Secretary shall select the producer members of the Board from nominations which may be made in the following manner.

(a) A meeting or meetings of producers shall be held in each State to nominate producer members for the Board. For nominations to the initial Board the meetings shall be announced by the U.S. Department of Agriculture. The Department may call upon other organizations to assist in conducting the meetings such as State and national organizations of potato producers. Such nomination meetings shall be held not later than 60 days after the issuance of this subpart. Any organization designated to hold such nomination meetings shall give adequate notice of such meetings to the potato producers affected; also to the Secretary so that a representative of the Secretary, if available, may conduct such meetings or act as secretary of such nomination meetings.

(b) After the establishment of the initial Board, the nominations for subsequent Board producer members shall be made by producers at meetings in the producing sections or States. The Board shall hold such meetings, or cause them to be held, in accordance with rules established pursuant to recommendation of the Board.

(c) Only producers may participate in designating producer nominees. Each producer is entitled to one vote only on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives for each position for which nominations are being held. If a producer is engaged in producing potatoes in more than one State, he shall elect the State in which he shall vote. In no event shall he vote in nominations in more than one meeting.

(d) The public member shall be nominated by the producer members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of potatoes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall prescribe such additional qualifications, administrative rules and procedure for selection and voting for each candidate as it deems necessary and the Secretary approves.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.323 Acceptance.

Each person selected by the Secretary as a member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1207.324 Vacancies.

To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1207.322. In the event of failure to provide nominees for such vacancies, the Secretary may select other eligible persons.

§ 1207.325 Procedure.

(a) Each State (or district or group of States established pursuant to § 1207.320 (d)) which has a member on the Board shall be entitled to not less than one vote for any production up to 1 million hundredweight, plus one additional vote for each additional 1 million hundredweight of production, or major fraction thereof, as determined by the latest crop production annual summary report issued by the Crop Reporting Board, U.S. Department of Agriculture. The casting of the votes for each State shall be determined by the members of the Board from that State.

(b) A majority of the Board members shall constitute a quorum and any action of the Board shall require a majority of concurring votes of those present and voting. At assembled meetings all votes shall be cast in person or by duly authorized proxy.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, or telephone. Any vote cast by telephone shall be confirmed promptly in writing.

§ 1207.326 Compensation and reimbursement.

Members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as members of the Board.

§ 1207.327 Powers.

The Board shall have the following powers subject to § 1207.361:

(a) To administer the provisions of this plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this plan; and

(d) To recommend to the Secretary amendments to this plan.

§ 1207.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of Board members to nominate the public member; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) At the beginning of each fiscal period, to prepare and submit to the Secretary for his approval a budget on a fiscal period basis of the anticipated expenses in the administration of this plan including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To develop programs and projects and to enter into contracts or agreements for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers:

(g) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(h) To act as intermediary between the Secretary and any producer or handler; and

(i) To furnish the Secretary such information as he may request.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

RESEARCH AND PROMOTION

§ 1207.335 Research and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products: *Provided, however,* That any such program or project shall be directed toward increasing the general demand for potatoes and potato products;

(b) Establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards and supply management programs shall not be conducted under, or as a part of, this plan; and

(c) The development and expansion of potato and potato product sales in foreign markets.

(d) No advertising or promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products.

EXPENSES AND ASSESSMENTS

§ 1207.341 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1207.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of potatoes and potato products, such other expenses for the administration, maintenance, and functioning of the Board, and any referendum and administrative costs incurred by the Department of Agriculture as are approved pursuant to § 1207.361.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers as designated in regulations issued by the Board. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture and not more than one such assessment maybe collected on any potatoes.

(b) Each designated handler, as specified in regulations, shall pay assessments to the Board on all potatoes handled by him, including potatoes he produced. Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder. The designated handler may collect the assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made, provided he furnishes the producer with evidence of such payment.

(c) The Board may authorize other organizations to collect assessments in its behalf.

(d) The Board may exempt potatoes used for nonfood purposes, other than seed, from the provisions of this plan and shall establish adequate safeguards against improper use of such exemptions.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.343 Producer refunds.

Any producer who has paid an assessment under this plan and who is not in favor of supporting the research and promotion program as provided for in this plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that he paid the assessment for which refund is sought. Any such demand shall be made personally by such producer on a form which he shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefor. No handler shall be eligible for a refund except on potatoes produced by him.

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1207.350 Reports.

Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties under this part. Such reports may include, but shall not be limited to, the following:

(a) Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;

(b) Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments, and

(c) Name and address of each person from whom he collected an assessment, the amount collected from each person, and the date such collection was made.

§ 1207.351 Books and records.

Each handler subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary, but not to persons not subject to the provisions of section 310(c) of the act, such books and records as are appropriate and necessary to carry out the provisions of this plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

§ 1207.352 Confidential treatment.

All information obtained from such books, records, or reports shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems releant shall be disclosed by them and hen only in a suit or administrative iearing brought at the direction, or ipon the request, of the Secretary, or o which he or any officer of the Jnited States is a party, and involving his plan. Nothing in this section shall e deemed to prohibit (a) the issuance f general statements based upon the eports of a number of handlers subect to this plan, which statements do iot identify the information furnished y any person, or (b) the publication y direction of the Secretary, of the iame of any person violating this lan, together with a statement of the articular provisions of this plan vioated by such person.

MISCELLANEOUS

1207.360 Influencing governmental action.

No funds collected by the Board inder this plan shall in any matter be ised for the purpose of influencing overnmental policy or action except n recommending to the Secretary mendments to this subpart.

1207.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or ther substantive action proposed and repared by the Board shall be subnitted to the Secretary for his approvl.

1207.362 Suspension or termination.

(a) The Secretary shall, whenever he inds that this plan or any provision hereof obstructs or does not tend to ffectuate the declared policy of the ct, terminate or suspend the opertion of this plan or such provision hereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a eferendum on request of the Board or f 10 percent or more of the potato roducers to determine whether otato producers favor the terminaion or suspension of this plan. He hall suspend or terminate such plan t the end of the marketing year vhenever he determines that its susension or termination is favored by a najority of the potato producers oting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of potatoes and who produced more than 50 percent of the volume of the potatoes produced by the producers voting in the referendum.

§ 1207.363 Proceedings after termination.

(a) Upon the termination of this plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in the possession or under control of the Board including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to this plan; (3) account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board of the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustee.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1207.364 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this plan or any regulation issued thereunder, or (b) release or extinguish any violation of this plan or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1207.365 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes, or other acts, either of commission or omission, as such member except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability thereof to other persons or circumstances shall not be affected thereby.

EXPENSES AND RATE OF ASSESSMENT

§ 1207.412 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1983, and ending June 30, 1984, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,565,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Approved by the Office of Management and Budget under Control No. 0581-0093)

[48 FR 38604, Aug. 25, 1983]

Subpart—Rules and Regulations

SOURCE: 37 FR 17379, Aug. 26, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.500 Definitions.

(a) *Plan.* "Plan" means the Potato Research and Promotion Plan issued by the Secretary of Agriculture pursuant to the act.

(b) *Board.* "Board" means the National Potato Promotion Board, established pursuant to § 1207.320 of the plan.

(c) *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown by producers in the 48 contiguous States of the United States.

(d) *Producer.* "Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

(e) *Handle.* "Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

(f) *Handler.* "Handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

(g) *Person.* "Person" means any individual, partnership, corporation, association or other entity.

(h) *Secretary.* "Secretary" means the Secretary of Agriculture of the United

States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(i) *Processor.* "Processor" means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

GENERAL

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, 1385 South Colorado Boulevard, Suite 512, Denver, CO 80222.

[38 FR 26354, Sept. 20, 1973]

§ 1207.503 Nominations.

(a) Pursuant to § 1207.322 of the plan, the Board shall hold or cause to be held a meeting or meetings of producers in the producing sections or States each year to nominate members for the Board. One individual shall be nominated for each position to become vacant. A list of nominees shall be submitted to the Secretary for his consideration by January 1 of each year.

(b) Such meetings shall be well publicized with notice given to producers and the Secretary at least 10 days prior to the meeting.

[37 FR 17379, Aug. 26, 1972, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.504 Term of office.

(a) The term of office of Board members shall be for three years and shall begin March 1 and end on the last day of February.

(b) Board members shall serve during the term of office for which they are selected and have qualified and until their successors are selected and have qualified.

[38 FR 7123, Mar. 16, 1973, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.505 Procedure.

The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, which are hereby approved.

§ 1207.506 Policy.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for potatoes and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the potato industry and no undue preference shall be given to any of the various industry segments.

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the President, and six Vice Presidents, one of whom shall also serve as the Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to § 1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to § 1207.513(d).

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of and in the name of the Board in all administrative matters.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985]

§ 1207.508 USDA costs.

Pursuant to § 1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

[49 FR 26202, June 27, 1984]

ASSESSMENTS

§ 1207.510 Levy of assessment.

During the effective period of this subpart, an assessment of two cents per hundredweight shall be levied on all potatoes for ultimate consumption as human food and seed. Potatoes used for other nonhuman food purposes, including starch, are exempted from assessment but subject to the safeguard provisions of § 1207.515 of this subpart. No more than one such assessment shall be made on any potatoes. No assessments shall be levied on potatoes grown by producers of less than five acres of potatoes.

[49 FR 26202, June 27, 1984]

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes handled shall be paid by the designated handler as hereinafter set forth:

(a) Unless otherwise provided in paragraphs (a)(8), (b), and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases

such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce; there is no designated handler in this instance since the potatoes have not been handled as heretofore defined and no assessment is due. However, seed potatoes sold or shipped to other producers for planting or to other persons for subsequent disposition enter the current of commerce and are subject to assessment. The producer of seed potatoes shall be the designated handler of such potatoes shipped to other producers for planting and the assessment is due when he first sells or otherwise handles such potatoes. The first person who acquires seed potatoes from the producer thereof for subsequent disposition other than planting by said person shall be the designated handler of such potatoes. However, the seed producer will be the designated handler responsible for filing reports and making payments, unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To show this the seed producer must submit to the Potato Board the name and address of the first person who obtained the potatoes from him and an invoice of sale or settlement sheet on which it is indicated that such person will be the designated handler and therefore will be responsible for the payment of the assessments. Only by showing this is the seed producer no longer considered the designated handler and therefore not liable for the assessments.

(b) Any person who handles potatoes for a producer thereof under oral or written contract or agreement providing for the sale thereof shall be the designated handler for such potatoes, notwithstanding the fact that the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

Examples. A cooperative marketing association, or other person, who makes an accounting to the producer, or pay the proceeds of the sale to the producer would be the designated handler responsible for the assessment.

(c) Any processor who purchases potatoes from the producer thereof shall be the designated handler even though the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 4, 40 FR 7893, Feb. 24, 1975; Amdt. 7, 43 FR 9133, Mar. 6, 1978; Amdt. 8, 43 FR 51001, Nov. 2, 1978]

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce.

(b) *Responsibility for payment.* The designated handler is responsible for payment of assessment. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable by the handler to the Board. Failure of the handler to collect or deduct such assessment does not relieve the handler of his obligation to remit the assessment to the Board.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (d) of this section, each designated handler shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

(2) All designated handler reports shall contain the following information:

(i) Date of report (which is also date of payment to the Board);

(ii) Period covered by report;

(iii) Total quantity of potatoes determined as assessable during the reporting period, pursuant to § 1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts or pay the assessment themselves shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such settlement sheets contain all the information listed above.

(ii) The words "final report" shall be shown on the last report at the close of his marketing season or at the end of each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of § 1207.352 *Confidential treatment,* of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977]

§ 1207.514 Refunds.

A refund of assessments may be obtained by a producer only by following the procedure prescribed in this section.

(a) *Application form.* A producer shall obtain a refund form from the Board by written request which shall bear the producer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his title.

(b) *Submission of refund application to Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment become payable pursuant to § 1207.513. The refund application shall show (1) producer's name and address, (2) handler's or handlers' name(s) and address(es); (3) the number of hundredweight on which refund is requested; (4) date or inclusive dates on which assessments were paid; and (5) the producer's signature. Where more than one producer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of such producers and the signature of each.

(c) *Proof of payment of assessment.* The receipt given to the producer by the handler, a copy thereof, or such other evidence satisfactory to the Board, shall accompany the producer's refund application. Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form.

[37 FR 17379, Aug. 26, 1972, as amended at 39 FR 16117, May 7, 1974; 42 FR 55879, Oct. 20, 1977]

§ 1207.515 Safeguards.

The Board may require reports by designated handlers on the handling and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

RECORDS

§ 1207.532 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability: (a) One copy of each report made to the Board; and (b) such records as are necessary to verify such reports.

§ 1207.533 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581-0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the plan.

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.550 Determination of membership.

Pursuant to § 1207.320 and the recommendation of the National Potato Promotion Board, annual membership on the Board shall be determined on the basis of the average potato production of the three preceding years in each of the 48 contiguous States as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

[38 FR 26354, Sept. 20, 1973]

PART 1250—EGG RESEARCH AND PROMOTION

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1250.552 Right of the Secretary.

AUTHORITY: Pub. L. 93-428, 88 Stat. 1171 (7 U.S.C. 2701 *et seq.*) (Egg Research and Consumer Act), unless otherwise noted.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate an Order Under the Egg Research and Consumer Information Act

SOURCE: 40 FR 13198, Mar. 25, 1975, unless otherwise notes.

§ 1250.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1250.2 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Egg Research and Consumer Information Act, as amended, Pub. L. 93-428, 88 Stat. 1171, *et seq.*, 7 U.S.C. 2701-2718.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term "Administrative Law Judge" or "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or any amendment thereto which may be issued pursuant to the act.

(i) The term "proceeding" means a proceeding upon the basis of which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

(Secs. 2-21, 88 Stat. 1171 *et seq.* (7 U.S.C. 2701 *et seq.*), as amended, Pub. L. 96-276, 94 Stat. 541)

[40 FR 13198, Mar. 25, 1975, as amended at 45 FR 75166, Nov. 14, 1980]

§ 1250.3 Proposals.

(a) An order may be proposed by egg producers or by any other interested person or persons, including the Secretary. If any person other than the Secretary proposes an order, he shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose an order, he shall sign and cause to be served a notice of hearing, as provided herein.

§ 1250.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall after the date of publication of the notice in the FEDERAL REGISTER, as probe that which the Administrator may determine to be reasonable in the circumstances: *Provided,* That, in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each egg association known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in his discretion, are best calculated to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of the 48 contiguous States of the United States and the mayor of the District of Columbia.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1250.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1250.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or laws; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 1250.7 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1250.16 (b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 1250.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1250.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1250.4 (relating to the giving of notice of the hearing; *Provided,* That, if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative.

(ii) In the case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register, and the affidavit or certificate of the giving of notice of the determination provided for in § 1250.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to reply.

(2) *Objection.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before

the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quintuplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That, interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

[40 FR 13198, Mar. 25, 1975; 40 FR 15065, Apr. 4, 1975]

§ 1250.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1250.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 1250.10 Certification of the transcript.

The judge shall notify, the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and four copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than in the official record copy.

§ 1250.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1250.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed order.

(d) *Omission of the recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 1250.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed, the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 1250.14 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue an order or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1250.15: *Provided,* That such order shall not be executed, issued or made effective until and unless the Secretary determines that the requirements of § 1250.15 have been met.

§ 1250.15 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if he finds that it will tend to effectuate the purpose of the act, issue and make effective the order, if any, which was filed as a part of his decision pursuant to § 1250.14: *Provided,* That the issuance of such order shall have been approved or favored by producers as required by section 9 of the act.

(b) *Effective date of order.* No order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1250.16 Filing; extensions of time; effective date of filing, and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk, shall be filed in quintuplicate. Any document, or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Extensions of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

§ 1250.17 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of a hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person; *Provided*, That procedural matters and status reports shall not be included within this limitation: *And, provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications,

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

(Secs. 2-21, 88 Stat. 1171 et seq. (7 U.S.C. 2701 et seq.), as amended, Pub. L. 96-276, 94 Stat. 541)

[45 FR 75166, Nov. 14, 1980]

§ 1250.18 Additional documents to be filed with the hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1250.19 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When he so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Procedure for the Conduct of Referenda in Connection With Egg Research and Promotion Order

SOURCE: 40 FR 48496, Oct. 16, 1975, unless otherwise noted.

§ 1250.200 Referenda.

Referenda for the purpose of ascertaining whether the issuance by the

Secretary of Agriculture of an Egg Research and Promotion Order, or the continuance, termination, or suspension of such an order, is approved or favored by producers, shall unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1250.201 Definitions.

(a) "Act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428, 7 U.S.C. 2701 et seq.).

(b) "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead; and "Department of Agriculture" means the United States Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Order" means the order or any amendment thereto promulgated pursuant to the act with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 9 of the act (7 U.S.C. 2708).

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) "Egg producer" or "producer" means any person who either: (1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or (2) is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens UNLESS it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, who was engaged in the production of commercial eggs during the representative period, and who is not exempt from the provisions of the order as provided for in § 1250.347 thereof, shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trustee of a producing estate, or an authorized representative of any other entity may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other entity, and that he has the authority to take such action. Upon request of the referendum agent, such individual shall submit adequate evidence of his authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

[40 FR 48496, Oct. 16, 1975; 40 FR 59190, Dec. 22, 1975]

§ 1250.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume of commercial eggs produced during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing, without advertising expense, available media of public information (including, but not limited to, press and radio facilities) serving the production area(s), announcing the dates, places, and method(s) of voting, eligibility requirements and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer whose name and address are known to the Secretary or the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1250.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) See the ballots and the aforesaid texts are distributed to producers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and inquire, as deemed appropriate into the eligibility of such persons to vote in the referendum.

§ 1250.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1250.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1250.207 Confidential information.

The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Orders

SOURCE: 40 FR 48497, Oct. 16, 1975, unless otherwise noted.

§ 1250.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1250.251 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428, 7 U.S.C. 2701 et seq.);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereinafter be delegated, the authority to act in his stead;

(d) The term "Administrative Law Judge" or "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead;

(f) The term FEDERAL REGISTER means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity, subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 14(a) of the act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "Hearing Clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) The term "Administrative Law Judge's report" means the Administrative Law Judge's report to the Secretary and includes the Administrative Law Judge's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions, and orders submitted by the parties; and

(n) The term "petition" includes an amended petition.

§ 1250.252 Institution of proceeding.

(a) *Filing and service of petition.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with the law, shall file with the Hearing Clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them, if a partnership, the name and address of each partner:

(2) Reference to the specific terms and provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition.

(c) *Application to dismiss petition.* (1) If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, he may, within 30 calendar days after the filing of the petition, file with the Hearing Clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this section. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such application, including any memorandum of law, must be filed by the petitioner with the Hearing Clerk not later than 20 calendar days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the application to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the Hearing Clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65, incorporated by paragraph (d) of this section: *Provided,* That within 20 calendar days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the grounds that it

does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the Hearing Clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from orders shall be governed by § 900.52a through § 900.71 excluding § 900.70 of the title "Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders" revised October 29, 1973, and any amendments thereto, except that all references to marketing orders shall mean orders under the act, and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference.

Subpart—Egg Research and Promotion Order

SOURCE: 40 FR 59190, Dec. 22, 1975, unless otherwise noted.

DEFINITIONS

§ 1250.301 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1250.302 Act.

"Act" means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93-428).

§ 1250.303 Fiscal period.

"Fiscal period" means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

§ 1250.304 Egg Board or Board.

"Egg Board" or "Board" or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

§ 1250.305 Egg producer or producer.

"Egg producer" or "producer" means any person who either:

(a) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(b) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual argeement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.306 Commercial eggs or eggs.

"Commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

§ 1250.307 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1250.308 United States.

"United States" means the 48 contiguous States of the United States of America and the District of Columbia.

§ 1250.309 Handler.

"Handler" means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

§ 1250.310 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 1250.311 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

§ 1250.312 Marketing.

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

§ 1250.313 Eligible organization.

"Eligible organization" means any organization, association, or cooperative which represents egg producers of any egg producing area of the United States certified by the Secretary pursuant to § 1250.356.

§ 1250.314 Plans and projects.

"Plans" and "projects" means those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

§ 1250.315 Part and subpart.

"Part" means the Egg Research and Promotion Order and all rules, regulations, and supplemental order issued pursuant to the act and the order. "Subpart" refers to the aforesaid order or any other portion or segment of this part.

§ 1250.316 Representative of a producer.

"Representative of a producer" means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

EGG BOARD

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the "Board," composed of 18 egg producers or representatives of egg producers, and 18 specific alternates, all appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328.

§ 1250.327 Term of office.

The members of the Board, and their alternates, shall serve for terms of 2 years, except initial appointments shall be, proportionately, for terms of 2 and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has qualified. No member shall serve for more than three consecutive terms.

§ 1250.328 Nominations.

All nominations authorized under § 1250.326 shall be made in the following manner:

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic area as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 1250.356, or, if the Secretary determines that a substantial number of egg producers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such egg producers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary two nominations for each appointment to be made;

(d) For purposes of nominating members, and their alternates, to the Board, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California. The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1-3, Area 2-4, Area 3-2, Area 4-2, Area 5-4, and Area 6-3, for a total of 18 members from all areas. Changes to the Board as provided in paragraph (e) of this section shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number; and

(e) After the establishment of the initial Board, the area grouping of the 48 contiguous States of the United States provided for in paragraph (d) of this section, including the area distribution of the 18 members of the Board and their alternates, shall be reviewed at any time not to exceed 5 years by the Board, or by a person or agency designated by the Board to perform such review, and the results shall be reported to the Secretary along with any recommendations by the Board regarding whether the delineation of the areas and the area distribution of the Board should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area, providing that each area shall be represented by not less than one Board member and any action recommended shall be subject to the approval of the Secretary.

§ 1250.329 Selection.

From the nominations made pursuant to § 1250.328, the Secretary shall appoint the members of the Board, and an alternate for each such member, on the basis of representations provided for in § 1250.326, § 1250.327, and § 1250.328.

§ 1250.330 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Board shall qualify by filing a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1250.331 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person appointed as a member, or as an alternate member, of the Board, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated, qualified, and appointed in the manner specified in § 1250.326, § 1250.328(b), § 1250.329, and

§ 1250.330, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 1250.332 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and qualified.

§ 1250.333 Procedure.

(a) A majority of the members, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1250.334 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1250.335 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1250.336 Duties.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, to adopt such rules for the conduct of its business as it may deem advisable, and it may establish advisory committees of persons other than Board members;

(b) To appoint or employ such persons as it may deem necessary and to define the duties and determine the compensation of each;

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto;

(d) With the approval of the Secretary, to enter into contracts or agreements with persons, including, but not limited to, State, regional, or national agencies or State, regional, or national egg organizations which administer research, education, or promotion programs, advertising agencies, public relations firms, public or private research organizations, advertising and promotion media, and egg producer organizations, for the development and submission to it of plans and projects authorized by § 1250.341 and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the cost thereof with funds collected pursuant to § 1250.347. Any such contracts or agreements shall provide that such contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contractor shall keep accurate records of all of its transactions and make periodic reports to the Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(e) To review and submit to the Secretary any plans or projects which have been developed and submitted to it by the prospective contractor, together with its recommendations with respect to the approval thereof by the Secretary;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To prepare and make public, at least annually, a report of activities carried out and an accounting for funds received and expended;

(h) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings;

(j) To act as an intermediary between the Secretary and any producer or handler; and

(k) To submit to the Secretary such information pursuant to this subpart as he may request.

RESEARCH, EDUCATION, AND PROMOTION

§ 1250.341 Research, education, and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided, however,* That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research, marketing, and development projects and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof in accordance with section 7(b) of the act, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated;

(c) The development and expansion of foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl;

(d) Each program or project authorized under paragraphs (a), (b), and (c) of this section shall be periodically reviewed or evaluated by the Board to insure that each such program or project contributes to a coordinated national program of research, education, and promotion contributing to the maintenance of markets and for the development of new markets for and of new products from eggs, egg products, spent fowl, and products of spent fowl. If it is found by the Board that any such program or project does not further the national purpose of the act, then the Board shall terminate such program or project; and

(e) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1250.346 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. The funds to cover such expenses shall be paid from assessments received pursuant to § 1250.347.

§ 1250.347 Assessments.

Each handler designated in § 1250.348 and pursuant to regulations issued by the Board shall collect from each producer; except that the following shall be exempt from the provisions of this section: (a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 3,000 laying hens, and (b) any producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks; and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board, an assessment at the rate of 5 cents per 30-dozen case of eggs, or the equivalent thereof, or such lesser amount set by the Board and approved by the Secretary for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

§ 1250.348 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessment specified in § 1250.347 shall be any one of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309,

(2) A producer who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309 for eggs of his own production, or

(3) Such other persons as designated by the Board under rules and regulations issued pursuant to this subpart.

(b) Handlers shall collect and remit to the Egg Board all assessments collected in the manner and in the time specified by the Board pursuant to rules and regulations issued by the Board.

(c) Handlers shall maintain such records as the Egg Board may prescribe pursuant to rules and regulations issued by the Board.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to collect assessments in its behalf.

§ 1250.349 Producer refunds.

Any egg producer against whose eggs any assessment is made under the authority of the act and collected from him and who is not in favor of supporting the programs as provided for in this subpart shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought. Any such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. However, in no event should such period be more than 90 days after the end of the month in which the assessments are due and collectable. Any such refund shall be made within 60 days after demand is received therefor.

§ 1250.350 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except to recommend to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1250.351 Reports.

Each handler subject to this subpart and other persons subject to section 7(c) of the act may be required to report to the Board periodically such information as is required by regulations and will effectuate the purposes of the act, which information may include but not be limited to the following:

(a) Number of cases of eggs handled;

(b) Number of cases of eggs on which an assessment was collected;

(c) Name and address of person from whom any assessment was collected; and

(d) Date collection of assessment was made on each case of eggs handled.

§ 1250.352 Books and records.

Each handler subject to this subpart and persons subject to section 7(c) of the act shall maintain and make available for inspection by the Board or the Secretary such books and records as are necessary to carry out the provisions of the subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1250.353 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this paragraph shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period of time, or (3) the publication, by direction of the Secretary, of the name of any person violating this subpart together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds, except as provided in paragraph (a)(2) of this section, made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and the Board.

CERTIFICATION OF ORGANIZATIONS

§ 1250.356 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members on the Board to represent the geographic area in which the organization represents egg producers. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its egg producer membership consists of a substantial number of egg producers who produce a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in the nomination of members for the Board or to request the issuance of an order. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final.

MISCELLANEOUS

§ 1250.357 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of egg producers voting in the referendum approving this subpart, to determine whether egg producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart at the end of 6 months after he determines that suspension or termination of the subpart is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 percent of the volume of eggs produced by the egg producers voting in the referendum.

§ 1250.358 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than six of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary, (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1250.336, (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct, and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the research or promotion programs hitherto authorized.

§ 1250.359 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued hereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1250.360 Personal liability.

No member or alternate member of the Board shall be held personally responsible either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty, or willful misconduct.

§ 1250.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1250.362 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by an organization certified pursuant to section 16 of the act, or by any interested person affected by the provisions of the act, including the Secretary.

§ 1250.363 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 41 FR 22925, June 8, 1976, unless otherwise noted.

DEFINITIONS

§ 1250.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Egg Research and Consumer Information Act, hereinafter called the Act, and the Egg Research and Promotion Order, hereinafter called the Order.

(a) *Act.* "Act" means the Egg Research and Consumer Information Act as it may be amended (Pub. L. 93-428).

(b) *Secretary.* "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(c) *Egg Board or Board.* "Egg Board" or "Board" or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

(d) *Fiscal period.* "Fiscal period" means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

(e) *Egg producer or producer.* "Egg producer" or "producer" means any person who either:

(1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(f) *Commercial eggs or eggs.* "Commercial eggs" or "eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(g) *Person.* "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) *Handle.* "Handle" means to grade, carton, process, transport, purchase, or in any way place eggs or cause eggs to be placed in the current of commerce. Such term shall not include the washing, the packing in cases, or the delivery by the producer of his own nest run eggs.

(i) *Handler.* "Handler" means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production.

(j) *Egg products.* "Egg products" means products produced, in whole or in part, from eggs.

(k) *Cooperating agency.* "Cooperating agency" means any person with which the Egg Board has entered into an agreement pursuant to § 1250.517(c).

(l) *Case.* "Case" means the standard shipping package containing 30-dozen eggs or the equivalent thereof.

(m) *Plans and projects.* "Plans" and "projects" mean those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

(n) *Representative of a producer.* "Representative of a producer" means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

(o) *Hen or laying hen.* "Hen" or "laying hen" means a domesticated female chicken 20 weeks of age or over, raised primarily for the production of commercial eggs.

(p) *Hatching eggs.* "Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(q) *United States.* "United States" means the 48 contiguous States of the United States of America and the District of Columbia.

(r) *Promotion.* "Promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(s) *Research.* "Research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

(t) *Consumer education.* "Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(u) *Marketing.* "Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(v) *Commerce.* "Commerce" means interstate, foreign, or intrastate commerce.

(w) *Spent fowl.* "Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(x) *Products of spent fowl.* "Products of spent fowl" means commercial products produced from spent fowl.

(y) *Started pullet.* "Started pullet" means a hen less than 20 weeks of age.

(z) *Shell egg packer.* "Shell egg packer" means any person grading eggs into their various qualities.

(aa) *Egg breaker.* "Egg breaker" means any person subject to the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) engaged in the breaking of shell eggs or otherwise involved in preparing shell eggs for use as egg products.

(bb) *Nest run eggs.* "Nest run eggs" means eggs which are packed as they come from the production facilities without having been sized and/or candled with the exception that some checks, dirties, or obvious undergrades may have been removed and provided further that the eggs may have been washed.

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

§ 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Part 1250 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
Sec.:	
1250.523	0581-0098
1250.528	0581-0098
1250.529	0581-0098
1250.530	0581-0098
1250.535	0581-0098

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) and Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701-2718))

[48 FR 56566, Dec. 22, 1983]

GENERAL

§ 1250.505 Communications.

Communications in connection with the Order shall be addressed to the Egg Board at its business address.

§ 1250.506 Policy and objective.

(a) It shall be the policy of the Egg Board to carry out an effective and continuous coordinated program of research, consumer and producer education, advertising, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States.

(b) It shall be the objective of the Egg Board to carry out programs and projects which will provide maximum benefit to the egg industry and no undue preference shall be given to any of the various industry segments.

§ 1250.507 Contracts.

The Egg Board, with the approval of the Secretary, may enter into contracts with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Egg Board shall be subject to the provisions of this subpart.

§ 1250.508 Procedure.

The organization of the Egg Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1250.509 USDA costs.

Pursuant to § 1250.347 of the Order, the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

§ 1250.510 Determination of Board membership.

Pursuant to § 1250.328 (d) and (e) of the order, Board representation among the 6 geographic areas is reapportioned to reflect a change in the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, and their alternates who shall be appointed from each area, beginning with the 2-year term 1985-86, are: Area 1-3, Area 2-3, Area 3-3, Area 4-2, Area 5-3, and Area 6-4.

[49 FR 24010, June 11, 1984]

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

§ 1250.514 Levy of assessments.

An assessment of 5 cents per case of commercial eggs, or such lesser amount as set by the Board and approved by the Secretary, hereinafter called the assessment, is hereby levied on each case of commercial eggs handled for the account of each producer on and after August 1, 1976; except that the following shall be exempt from the provisions of this section: (a) Any egg producer whose aggregate number of laying hens at any time during the 3-consecutive-month period immediately prior to the month in which assessments are due and payable has not exceeded 3,000 laying hens, and (b) any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks. Each case of commercial eggs shall be subject to assessment only once.

§ 1250.515 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar month or a 4-week accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Board on an individual basis. Each collecting handler shall register his reporting period with the Board. All changes in reporting periods shall be requested in writing and subject to approval by the Board.

(b) Each producer shall pay the required assessment on his commercial eggs pursuant to § 1250.514 to the collecting handler designated in § 1250.516 on or before the date of final settlement between the producer and the collecting handler for the eggs received by the collecting handler during each reporting period.

§ 1250.516 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessments shall be any of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, or breaks such eggs. Such shell egg breaker or egg packer must collect and remit to the Board the assessments on all eggs handled except eggs for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(2) A person who buys or receives nest run eggs from a producer and who does not grade, carton, or break such eggs. Such person shall collect the assessment from the producer and remit to the Egg Board on all such eggs, except for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(3) Except as otherwise provided in paragraph (a)(4) of this section, a producer who grades, cartons, or breaks eggs of his own production shall be responsible for remitting the assessment to the Board on all eggs produced. This would include the eggs which he grades, cartons, or breaks as well as the nest run eggs which are graded, cartoned, or broken by another handler. Such a producer who remits the assessment on nest run eggs to the Board shall provide the handler specified in paragraph (a) (1) or (2) of this section with a written statement that the assessment has already been paid on the nest run eggs; or

(4) Upon approval of the Board, any person who handles eggs for a producer under a written contract that includes express provisions that said handler will remit the assessment on such eggs to the Board shall be the collecting handler notwithstanding the fact that the producer may have graded, cartoned, or otherwise processed the eggs.

Following are some examples to aid in identification of collecting handlers: (i) Producer sells, assigns, consigns, or otherwise delivers nest run eggs of his own production to a shell egg packer or breaker for preparation for market—the shell egg packer or breaker is the collecting handler and is responsible for remitting to the Egg Board; (ii) producer grades, cartons, breaks, or otherwise prepares for marketing a portion of the eggs of his own production and delivers the remaining portion of his nest run eggs to a shell egg packer or breaker—the producer is the collecting handler and shall remit the assessment on his total production to the Board; (iii) producer sells all or a portion of his eggs in nest run form to a handler who is not a shell egg packer or breaker—the handler is responsible for collecting the assessment and remitting it to the Egg Board except for eggs covered by a statement indicating that an assessment has already been paid; (iv) a shell egg packer or breaker who buys or receives nest run eggs from a handler who is not a shell egg packer or breaker—the handler is the collecting handler and shall remit such assessment to the Board; (v) a shell egg packer or egg breaker buys nest run or graded eggs including undergrade eggs from another shell egg packer or egg breaker—the first shell egg packer or breaker is the collecting handler and shall remit such assessments to the Board.

(b) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer or his estate, or the person acting on behalf of creditors, shall be considered the producer of the eggs for the purpose of this subpart.

(c) The collecting handler may collect the assessment directly from the producer or deduct the assessment from the proceeds due or paid to the producer on whose eggs the assessment is made.

[41 FR 22925, June 8, 1976, as amended at 42 FR 60724, Nov. 29, 1977]

§ 1250.517 Remittance to Egg Board.

(a) The collecting handler responsible for remittance of assessments to the Board is not relieved of this obligation as a result of his failure to collect payment of the assessment from the egg producer(s).

(b) Each collecting handler required to remit the assessments on the eggs handled during each reporting period, specified in § 1250.515(a), shall remit the assessments directly to the Egg Board by check, draft, or money order payable to the Egg Board on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529. The assessment for each reporting period shall be calculated on the basis of the gross volume of eggs subject to assessment received by the collecting handler during each reporting period.

(c) Remittance through cooperating agency.

(1) In any State or specified geographic area the Egg Board, with the approval of the Secretary, may designate by agreement a cooperating agency to collect the assessments in its behalf. Every collecting handler within such a State or geographic area shall remit the assessments for each reporting period, specified in § 1250.515(a), to the designated cooperating agency by check, draft, or money order payable to said cooperating agency on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529.

(2) On or before the 20th day after the end of each reporting period, each designated cooperating agency shall remit to the Egg Board the total amount of all assessments received from collecting handlers for said reporting period together with all collecting handler reports. In addition, each designated cooperating agency shall submit to the Egg Board such information as is required by the designation agreement with the Egg Board.

§ 1250.518 Receipts for payment of assessments.

(a) Each collecting handler shall give each producer whose eggs are subject to assessment a receipt for the commercial eggs handled by said collecting handler showing payment of the assessment. This receipt may be on a separate receipt form or included as part of the invoice or settlement sheet for the eggs, but in either event shall contain the following information:

(1) Name, address, and identification number of the collecting handler;

(2) Name and address of the producer who paid the assessment;

(3) Number of cases of eggs on which assessment was paid and the total amount of the assessment; and

(4) Date on which assessment was paid by producer.

(b) All eggs sold, consigned, or delivered from a collecting handler to another handler, excluding cartoned eggs and loose graded eggs sold to the bakeries, restaurants, and institutions, shall be accompanied with the collecting handler's written statement that the assessment on the lot of eggs covered by the invoice has been paid or that lot of eggs or portion thereof is exempt from assessment under provisions of § 1250.514.

REFUNDS

§ 1250.523 Procedure for obtaining refunds.

Each egg producer against whose eggs an assessment was levied and collected may obtain a refund of the assessment amount for any calendar month in the following manner:

(a) Every refund request must be made by submitting to the Egg Board a completed Egg Board refund application form. The refund application form shall be obtained by written request to the Egg Board and shall require the following information:

(1) Producer's name(s) and address(es);

(2) Collecting handler's name(s), address(es), and identification numbers;

(3) Number of cases of eggs on which refund is requested and the total amount of refund requested;

(4) Dates or inclusive dates on which assessments were paid;

(5) The producer's signature or witnessed mark; and

(6) The receipt given to the producer by the collecting handler pursuant to § 1250.518, or a copy thereof, or such other evidence of payment as is satisfactory to the Egg Board.

Separate refund applications must be filed for assessments paid in different calendar months, but only a single refund request should be made for all assessments paid within a single calendar month.

(b) Every refund application must be mailed to the Egg Board within 90 days after the end of the calendar month during which the assessment obligation was due and collectable.

(c) Within 60 days following the date of receipt by the Egg Board of each properly executed refund application, and proof of payment of the assessment, the Egg Board shall remit the refund.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976, as amended by 42 FR 60724, Nov. 29, 1977]

REGISTRATION, CERTIFICATION AND REPORTS

§ 1250.528 Registration of collecting handlers.

All collecting handlers shall, prior to August 1, 1976, register with the Egg Board by filing a registration statement. Registered collecting handlers will receive an identification number which must appear on all required reports and official communications with the Egg Board. New businesses subject to this subpart beginning after August 1, 1976, shall register with the Egg Board within 30 days following the beginning of operations. The statement of registration shall include:

(a) Name and complete address of the collecting handler;

(b) Name of individual(s) responsible for filing reports with the Egg Board; and

(c) Type of reporting period desired.

§ 1250.529 Reports.

(a) Collecting handler reports.

(1) Each collecting handler shall make reports on forms made available or approved by the Egg Board. Each collecting handler shall prepare a separate report form each reporting period. Each report shall be mailed to the Egg Board within 15 days after the close of the reporting period and shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by the report;

(iii) Name and address of collecting handler and identification number;

(iv) Total number of cases of eggs handled, total number of cases of eggs subject to collection of assessment, total number of cases of eggs exempt under § 1250.514 from collection of assessment, total number of cases of imported eggs handled, and total number of cases of eggs received from another handler and on which an assessment was already collected;

(v) The names and addresses of producers subject to assessment supplying eggs to the handlers and number of cases of eggs received from each producer;

(vi) Total amount of assessment due for eggs handled during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Board.

(2) Collecting handler reports shall be filed each reporting period following registration until such time as the Egg Board is notified in writing that the collecting handler has ceased to do business. During reporting periods in which the collecting handler does not

handle any eggs, his report form shall state "No Eggs Handled."

(b) The Egg Board may require all persons subject to section 7(c) of the Act to make reports as needed for the enforcement and administration of the Order and as approved by the Secretary.

§ 1250.530 Certification of exempt producers.

Egg producers not subject to the provisions of § 1250.514 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of § 1250.514. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler within 10 days after the first sale of eggs to such handler after August 1, 1976, and annually thereafter on or before January 1 as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt by him. The certificate shall list the following:

(a) The name and address of the producer;

(b) Basis for producer exemption; and

(c) The signature of the producer.

If the exempt producer becomes subject to assessment pursuant to § 1250.514, he shall notify, within 10 days, all handlers with whom he has filed a certificate of exemption.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976]

RECORDS

§ 1250.535 Retention of records.

(a) Each person required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(1) One copy of each report submitted to the Egg Board;

(2) Records of all exempt producers including certification of exemption as necessary to verify the address of each exempt producer; and

(3) Such other records as are necessary to verify reports submitted to the Egg Board.

(b) Egg producers subject to § 1250.514 shall maintain and retain for at least 2 years beyond the period of their applicability:

(1) Receipts, or copies thereof, for payment of assessments; and

(2) Such records as are necessary to verify monthly levels of egg production.

§ 1250.536 Availability of records.

Each handler and egg producer subject to this subpart and all persons subject to section 7(c) of the Act shall make available for inspection and copying by authorized employees of the Egg Board and/or the Secretary during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1250.537 Confidentiality.

All information obtained by officers and employees of the Department of Agriculture, the Egg Board, or any person under contract by the Egg Board or otherwise acting on behalf of the Egg Board from the books, records, and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual producers, shall be kept confidential in the manner and to the extent provided in § 1250.353 of the Order.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

§ 1250.542 Patents, copyrights, trademarks, and information.

Patents, copyrights, trademarks, and information accruing from work pursuant to any plan or project undertaken by any person on behalf of the Egg Board, financed by assessment funds or other revenues of the Egg Board; shall become property of the U.S Government as represented by the Egg Board; and such patents, copyrights, trademarks, and information may be licensed subject to approval by the Secretary of Agriculture. Upon termination of the Order, the Egg Board shall transfer custody of all such patents, copyrights, trademarks, and information to the Secretary of Agriculture pursuant to the procedure provided for in § 1250.358 who shall utilize them in a manner that he determines to be in the best interest of egg producers. Funds generated from the use of patents, copyrights, trademarks, and information by the Egg Board will be considered income subject to the same fiscal, budget, and audit control as the other funds of the Egg Board. Ownership of inventions made by employees of the Board shall be determined in accordance with Executive Order 10096.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976]

PERSONAL LIABILITY

§ 1250.547 Personal liability.

No member, alternate member, employee, or agent of the Board in the performance of his duties with the Board shall be held personally responsible either individually or jointly with others, in anyway whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

RIGHT OF THE SECRETARY

§ 1250.552 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

PART 1260—BEEF RESEARCH AND INFORMATION

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Beef Research and Information Act

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AUTHORITY: Pub. L. 94-294, 94th Cong., approved May 28, 1976, 7 U.S.C. 2901-2918.

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Beef Research and Information Act

SOURCE: 41 FR 25881, June 23, 1976, unless otherwise noted.

§ 1260.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1260.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Beef Research and Information Act, as amended, Pub. L. 94-294, 94th Cong., approved May 28, 1976, 7 U.S.C. 2901-2918.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer of employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act.

(i) The term "proceeding" means a proceeding forming the basis on which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

[41 FR 25881, June 23, 1976, as amended at 44 FR 11056, Feb. 27, 1979]

§ 1260.3 Proposals.

(a) An order may be proposed by an organization of cattle producers or by any other interested organization or person, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereto to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, he shall sign and cause to be served a notice of hearing, as provided herein.

§ 1260.4 Requirement of bond or other security.

(a) Prior to the institution of proceedings on an original order, there shall be posted with the Secretary a bond or other security, in a form acceptable to the Secretary, in an amount which the Secretary shall determine to be sufficient to pay any expenses, excluding salaries, incurred by the Government in preparation of an original order and conduct of the referendum considering its approval.

(b) In the event that the original order shall not receive the necessary approval by referendum as required by Section 9 of the Act, the bond or other security shall be forfeited and the proceeds applied to reimburse the Secretary for the expenses incurred by the Government in the preparation of said order and conduct of said referendum.

§ 1260.5 Reimbursement of expenses by the Board.

The Board established by the order shall reimburse the Secretary, from producer assessments, for all the expenses and expenditures, including salaries, which the Secretary determines were incurred by the Government in the preparation of amendments to the order and the conduct of any referendum, including a referendum for termination of the order.

§ 1260.6 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable, in the circumstances: *Provided,* That in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each producer organization known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in his discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to the governors of the 50 States of the United States and the Mayor of the District of Columbia.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1260.7 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1260.8 Judge.

(a) ***Assignment.*** No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or laws; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 1260.9 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1260.18(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 1260.12 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1260.10 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1260.6 (relating to the giving of notice of the hearing): *Provided,* That if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the judge finds that a person, acting as

counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1260.6(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include arguement or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quintuplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or

whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1260.11 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1260.10(d), he shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1260.12 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and four copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of the testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 1260.13 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examinations during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1260.14 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 1260.15 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1260.16 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record; (c) a ruling upon each exception filed by interested persons; and (d) either (1) denial of the proposal to issue an order or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1260.17: *Provided,* That such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1260.17 have been met.

§ 1260.17 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if he finds that it will tend to effectuate the purpose of the Act, issue and make effective the order which was filed as part of his decision pursuant to § 1260.16: *Provided,* That the issuance of such order shall have been approved or favored by producers as required by Section 9 of the Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date thereof.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1260.18 Filing.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quintuplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1260.19 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person; *Provided,* That procedural matters and status reports shall not be included within this limitation: and, *Provided further,* That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

[44 FR 11056, Feb. 27, 1979]

§ 1260.20 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1260.21 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When he so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Procedure for the Conduct of Referendums in Connection With Beef Research and Information Order

SOURCE: 42 FR 25315, May 17, 1977, unless otherwise noted.

§ 1260.200 Referendums.

Referendums for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a Beef Research and Information Order, or the amendment, continuance, termination, or suspension of such an Order, is favored by producers, shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1260.201 Definitions.

(a) "Secretary" means the Secretary of Agrticulture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service.

(c) "Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

(d) "Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(e) "State ASC Committee" means the group of persons within a State designated by the Secretary to act as the State Agricultural Stabilization and Conservation committee.

(f) "County ASC Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation committee, pursuant to the regulations governing the election and functioning of the county Agricultural Stabilization and Conservation committee.

(g) "County ASCS Executive Director" means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the p erson acting in such capacity.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(i) "Cattle" means live domesticated bovine quadrapeds.

(j) "Producer" means any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter: *Provided*, That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(k) "Order" means the Beef Research and Information Order or any amendment thereto promulgated pursuant to the Act with respect to which the Secretary has directed that a referendum be conducted.

(l) "Representative period" means a consecutive twelve-month period preceding the referendum designated by the Secretary.

(m) "Registration period" means a 10-day period to be announced for the registration of producers desiring to vote in a referendum. The registration period shall end not less than ten calendar days prior to the first day of the voting period.

(n) "Voting Period" means a 4-day period to be announced for voting in a referendum.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.202 Supervision of referendum.

The Deputy Administrator shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State ASC committee shall be in charge of and responsible for conducting the referendum in its State. Each county ASC committee shall be responsible for conducting the referendum in its county.

§ 1260.203 Requirements of referendum.

No Beef Research and Information Order or amendment thereto issued under the Act shall become effective unless the Secretary determines (a) that valid ballots were cast by at least 50 percent of the eligible producers registered to vote, and (b) that the issuance of such Order is approved or favored by a majority of the producers casting valid ballots in such referendum.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.204 Computation of time.

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided*, That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1260.205 Public notice.

Advance public notice of the referendum shall be provided without advertising expense by the State and county ASCS offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the registration requirements and other pertinent information.

§ 1260.206 Eligibility.

(a) *Eligible producer*. Each person who was a producer at any time during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy registration and voting*. Proxy registration and voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer entity shall certify that he is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity shall be entitled to only one vote: *Provided, however,* That any member of a group may register to vote as a producer if he is an eligible producer separate from the group.

§ 1260.207 Registration.

(a) *Registration procedure.* Each producer desiring to vote in the referendum must register during the registration period with the county ASCS office serving the county in which his farm or ranch headquarters is located. An absentee producer who does not have a local headquarters may register and vote in any county where his cattle are located, but shall register and vote in only one such county. To register, a producer must complete a registration card, Form ASCS-151, during the registration period. Registration may be in person or by mail. A producer who wishes to register by mail may request the county ASCS office to mail him a registration card. A registration card shall be considered received during the registration period if (1) it was delivered in person to the county ASCS office prior to the close of business on the final day of the registration period, or (2) it was postmarked not later than midnight of the final day of the registration period, and was received in the county ASCS office prior to the close of business on the fourth day after the close of the registration period.

(b) *List of registered producers.* A list of registered producers shall be prepared and posted daily in a conspicuous public location at the county ASCS office during the registration period. A final list shall be posted on the fifth day after the close of the registration period. The list shall include all persons who submitted a valid registration card in a timely manner.

§ 1260.208 Voting.

(a) *Facilities and ballot box.* Each county ASCS office shall provide (1) adequate facilities and space to permit producers to mark their ballots in secret and (2) a sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(b) *Voting.* Voting may be in person or by mail. A producer wishing to vote by mail may request the county ASCS office to mail the producer a ballot. Ballots will be issued only to eligible cattle producers who have registered to vote. Ballots will not be provided prior to the voting period except to producers requesting ballots to vote by mail. Each registered cattle producer voting shall obtain and cast a ballot on Form ASCS-151A with the county ASCS office where that producer registered to vote. The ballot shall be marked to indicate "yes" or "no". Producers voting in person shall place their own ballots in the ballot box and have their names checked off the registration list. Producers voting by mail shall mark their ballots and place them in an envelope marked BEEF BALLOT. This envelope shall be placed in a second envelope marked BEEF REFERENDUM. Producers shall print and sign their names on the second envelope and mail the ballot to the county ASCS office where the producer registered to vote. Upon receiving the ballot, the county office shall open the outer envelope, place the envelope marked BEEF BALLOT in the ballot box unopened and note on the registration list that the producer has voted.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.209 Challenge of eligibility.

(a) *Who may challenge.* A person's eligibility to register and vote may be challenged by any person. The county ASCS executive director shall review all registrations and promptly challenge any registrant who appears to be ineligible. Any challenge of a person's eligibility to register and vote must be made prior to the beginning of the voting period.

(b) *Determinations of challenges.* Any person whose eligibility to register and to vote has been challenged must prove to the satisfaction of the county ASCS executive director that he was a producer during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is a producer. The county ASCS executive director shall make his determination concerning the eligibility of a producer who has been challenged as soon as practicable, and in all cases before the end of the voting period.

(c) *Challenged ballot.* A person whose eligibility to register or to vote has been challenged but not resolved by the county ASCS executive director or by the county ASCS committee, if on appeal, may be allowed to cast a ballot, but such ballot shall be considered a challenged ballot for the purpose of the referendum until a resolution of the challenge has been made. Challenged ballots shall be placed in the envelope marked BEEF BALLOT which in turn shall be placed in the envelope marked BEEF REFERENDUM with the name of the producer and the word "challenged" written in large letters across the envelope and placed in the ballot box. A challenged ballot shall be determined to have been resolved if no appeal is taken from the determination of the county ASCS executive director within the time allowed for appeal or there has been a determination by the county ASC committee after appeal.

(d) *Appeal.* Appeal from a decision by the county ASCS executive director on the eligibility of a person to register or to vote must be made to the county ASC committee within three business days after notification of such decision. An appeal shall be determined by the county ASC committee as soon as practicable, but in all cases not later than 5 days after the opening of the ballot box.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.210 Receiving ballots.

A ballot shall be considered to have been received during the voting period (a) if it were cast in the county ASCS office prior to the close of business on the final day of the voting period, or (b) if mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the county ASCS office prior to the close of business on the fourth day after the close of the voting period.

§ 1260.211 Canvassing ballots.

(a) *Counting the ballots.* As soon as possible after opening of the county ASCS office on the fifth day after the close of the voting period, employees of the county ASCS office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible procedures casting valid ballots, (2) number of producers favoring the order, (3) number of producers not favoring the order, (4) the number of challenged ballots deemed invalid, and (5) the number of spoiled ballots.

(b) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.212 County ASCS office report.

(a) *Preliminary report.* The county ASCS office shall notify the State ASCS office by telephone, telegraph, or messenger as to the preliminary results of the referendum as soon as possible. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each county ASCS office may release the unofficial results of the referendum in its county after the report has been given to the State ASCS office.

(b) *Final report.* Within seven days after the opening of the ballot box, each county ASCS office shall transmit a written summary certified by the county ASCS executive director of the final results of the referendum in its county to the State ASCS office. Any appeal concerning a producer's eligibility shall be resolved by the county ASCS committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county ASCS office in a conspicuous place accessible to the public and a copy shall be kept on file in the county ASCS office for a period of at least 12 months.

§ 1260.213 State ASCS office report.

(a) *Preliminary report.* Each State ASCS office shall send to the Deputy Administrator by telegraph as soon as possible a summary of the preliminary results of the referendum received from the county ASCS offices within its State. Such report shall also include the total number of eligible producers that registered to vote in the referendum. Each State ASCS office may release the unofficial results of the referendum in its State after its report has been sent to the Deputy Administrator.

(b) *Final report.* Within ten days after the opening of the ballot boxes in the county ASCS offices each State ASCS office shall transmit to the Deputy Administrator a written summary of the final results of the referendum received from the county ASCS offices within the State. Such summary shall be prepared in triplicate and certified by the State ASCS executive director. The original and one copy of the summary shall be sent to the Deputy Administrator. One copy of the summary shall be maintained in the State ASCS office where it shall be available for public inspection for a period of not less than 12 months.

§ 1260.214 Results of the referendum.

(a) The Deputy Administrator shall prepare and submit to the Secretary or his designee a report of the results of the referendum. The official results of the referendum shall be published in the FEDERAL REGISTER. State summaries and related papers shall be available for public inspection in the office of the Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture, Room 243-W, Administration Building, Washington, D.C.

(b) If the Deputy Administrator or the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

[42 FR 25315, May 17, 1977, as amended at 44 FR 71405, Dec. 11, 1979]

§ 1260.215 Disposition of ballots and records.

The county ASCS executive director shall place the registration cards, list of registrants, eligible voter lists, voted ballots, challenged registration cards and challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the county ASCS executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1260.216 Suspension and termination of order.

The Secretary of Agriculture may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving the Order, to determine whether such producers favor the termination or suspension of the Order, and he shall suspend or terminate such Order six months after he determines that suspension or termination of the Order is approved or favored by a majority of the producers voting in such referendum who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production of cattle, and who produced more than 50 percent of the volume of cattle produced by the producers voting in the referendum.

§ 1260.217 Instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION

Subpart—Procedure for the Conduct of Referendums

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APPENDIX I—AGREEMENT BETWEEN THE AMERICAN SHEEP PRODUCERS COUNCIL, INC., AND THE U.S. DEPARTMENT OF AGRICULTURE

AUTHORITY: Sec. 708, 68 Stat. 912, as amended (7 U.S.C. 1787).

Subpart—Procedure for the Conduct of Referendums

SOURCE: 43 FR 32124, July 25, 1978, unless otherwise noted.

§ 1270.1 Referendums.

Referendums for the purpose of determining producer approval of any proposed agreement between the Secretary of Agriculture and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats or the products thereof, shall be conducted in accordance with this subpart.

§ 1270.2 Definitions.

(a) "Secretary" means the Secretary of Agriculture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service.

(c) "Act" means the National Wool Act of 1954 (7 U.S.C. 1781 et seq.) and any amendments thereto.

(d) "Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(e) "State ASC Committee" means the group of persons within a State designated by the Secretary to act as the State Agricultural Stabilization and Conservation Committee.

(f) "County ASC Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee, pursuant to the regulations governing the election and functioning of the county Agricultural Stabilization and Conservation Committee.

(g) "County ASCS Executive Director" means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the person acting in such capacity.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(i) "Agreement" means any agreement between the Secretary of Agriculture and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats, or the products thereof, for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for the commodities handled by its members. The agreement may authorize the Secretary to make deductions from the incentive payments made to producers by the Commodity Credit Corporation for the purpose of funding the programs for advertising and sales promotion and dissemination of information carried out under such agreement.

(j) "Representative period" means a consecutive 12-month period preceding the referendum designated by the Secretary.

(k) "Voting period" means a 12-day period to be announced for voting in the referendum.

§ 1270.3 Supervision of referendums.

The Deputy Administrator shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State ASC committee shall be in charge of and responsible for supervising and directing the conduct of the referendum in its State. Each county ASC committee shall be responsible for conducting the referendum in its county. It shall be the duty of the Deputy Administrator and of each committee to conduct each referendum in a fair, unbiased and impartial manner, in accordance with this subpart.

§ 1270.4 Requirements of referendums.

An agreement shall become effective if the Secretary determines that it is approved or favored by (a) at least two-thirds of the eligible producers voting in the referendum or (b) eligible producers who produced at least two-thirds of the volume of sheep or goats, as the case may be, represented in the referendum.

§ 1270.5 Computation of time.

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided,* That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1270.6 Public notice.

Advance public notice of the referendum shall be provided without commercial advertising expense by the State and county ASCS offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the voting requirements and other pertinent information.

§ 1270.7 Eligibility.

(a) *Eligible producer.* Each producer who during a single period of at least 30 days during the representative period owned in the United States any sheep or goats, as the case may be, 6 months of age or older is entitled to vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy voting.* Proxy voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may cast a ballot on behalf of such entity. Any individual voting in the referendum on behalf of any producer entity shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of sheep or goats, as the case may be, as a producer entity shall be entitled to only one vote; *Provided, however,* That any member of a group may vote as a producer if he or she is an eligible producer separate from the group, except as provided in paragraph (d) of this section and § 1270.8(c)(2).

(d) *Cooperative association.* A cooperative association may qualify to vote by filing with the Director of the Emergency and Indemnity Payments Division, ASCS, USDA, Washington, DC 20250, not later than the date announced by the Department of Agriculture, the following documents: (1) A certified copy of the articles of incorporation and bylaws of the association, and (2) a certified copy of the resolution adopted by the association's board of directors authorizing the association to vote in the referendum. The Emergency and Indemnity Payments Division, ASCS, will send a ballot to each cooperative association which establishes its eligibility to vote. A cooperative association which qualifies to vote shall cast one ballot for all the eligible producers who, on the date the ballot is cast, are members of, stockholders in, or are under contract to sell their wool, sheep, mohair or goats, as the case may be, through the association in the marketing year (January 1 through December 31) in which the referendum is held. The number of votes to be counted for the ballot cast by the cooperative association shall be equal to the number of eligible producer-members in the cooperative association. If a ballot is cast by a cooperative association, the eligible producer-members of such cooperative association shall not otherwise cast ballots in the referendum.

§ 1270.8 Voting.

(a) *Mailing of ballots.* Each ASCS county office will mail ballots to all producers of whom the office has knowledge having ranch or farm headquarters located in its county. A producer who believes that he or she is eligible to vote but has not received a ballot, can obtain a ballot from the State or county ASCS office upon request. The Emergency and Indemnity Payments Division, ASCS, USDA, will mail ballots to all cooperative associations which qualify to vote on behalf of their members and others in accordance with § 1270.7(d) of this subpart.

(b) *Facilities and ballot box.* Each county ASCS office shall provide (1) adequate facilities and space to permit producers to mark their ballots in secret and (2) a sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(c) *Voting*—(1) *All producers except cooperative associations.* Voting may be in person or by mail. Each producer shall cast a ballot on form CCC 1160 with the County ASCS office where the producer's farm or ranch headquarters is located. The producer shall provide the following information on the ballot: (i) The date, (ii) a "yes" or "no" vote by marking the appropriate box, (iii) the number of sheep or goats, as the case may be, 6 months of age or older, located in the United States which the producer owned continuously during a single period of at least 30 days during the representative period, (iv) the address of the producer and (v) the signature of the producer. If the ballot is being cast on behalf of a partnership, corporation, or other entity, except a cooperative association, the person casting the ballot must provide the name and address of the producer entity he or she represents, and certify that he or she is authorized to vote on behalf of the producer entity.

(2) *Cooperative associations.* A cooperative association shall return its marked ballot to the Director, Emergency and Indemnity Payments Division, ASCS, USDA, Washington, DC, 20250, so that it will reach that office not later than the date designated by the Department of Agriculture. Each ballot cast by a cooperative association shall be accompanied by the original and two copies of a listing showing the names and addresses of all producers, otherwise eligible to vote, who on the date the vote is cast are members of, stockholders in, or under contract to sell their wool, sheep, mohair or goats, as the case may be, through the association in the marketing year in which the referendum is held. The producer's names shall be arranged alphabetically, on a separate sheet for each county. The listing for each county shall be headed by the name and address of the cooperative association and show whether the cooperative association was voting "yes" or "no" in the referendum. In preparing the listings, the cooperative association shall show for each producer the number of sheep or goats, as the case may be, 6 months of age or older which he owned continuously in the United States during a single period of at least 30 days during the representative

period. After checking the ballots and lists from the cooperative associations for completeness, the lists of producers for whom the cooperative associations have voted will be forwarded to the ASCS State offices concerned for distribution to the respective ASCS county offices. If a producer casts a ballot as an individual and a cooperative association's ballot lists the producer as a member, the producer's vote by the cooperative association shall count and not the individual ballot cast by the producer. If two or more cooperative associations cast ballots for the same producer, and the ballots take the same position with reference to the agreement which is the subject of the referendum, the producer's vote will be counted only once. If they take different positions, the producer's vote will not be counted.

§ 1270.9 Challenged ballots.

A person's eligibility to vote may be challenged by any person. The county executive director shall review all ballots and promptly challenge any ballot of a producer who appears to be ineligible or to have inaccurately indicated the number of sheep or goats, as the case may be, on the ballot.

(a) *Determination of challenges.* Any person whose ballot has been challenged or whose declaration of the number of sheep or goats, as the case may be, on the ballot has been challenged, must prove to the satisfaction of the county executive director that he or she was an eligible producer or that he or she did own the declared number of sheep or goats, as the case may be, during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is an eligible producer or that he or she owned the declared number of sheep or goats. The county ASCS executive director shall make his or her determination concerning a challenged ballot and notify the producer of such determination as soon as practicable, but no later than two days after the opening of the ballot box.

(b) *Appeal.* Appeal from a decision by the county ASCS executive director on the eligibility of a person or as to the number of sheep or goats, as the case may be, owned by the producer, must be made to the county ASC committee within 2 business days after notification of such decision. Any appeal shall be determined by the county ASC committee as soon as practicable, but in all cases not later than 7 days after the opening of the ballot box.

§ 1270.10 Receiving ballots.

A ballot shall be considered to have been received during the voting period (a) if it was cast in the county ASCS office prior to the close of business on the final day of the voting period, or (b) if mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the county ASCS office prior to the close of business on the fourth day after the close of the voting period.

§ 1270.11 Canvassing ballots.

(a) *Counting the ballots.* As soon as possible after opening of the county ASCS office on the fifth day after the close of the voting period, employees of the county ASCS office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers casting valid ballots, and the number of sheep or goats, as the case may be, indicated on their ballots, (2) number of eligible producers favoring the agreement and the number of sheep or goats, as the case may be, indicated on their ballots, (3) number of eligible producers not favoring the agreement and the number of sheep or goats, as the case may be, indicated on their ballots, (4) the number of challenged ballots deemed invalid, and (5) the number of spoiled ballots.

(b) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, mutilated, or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the agreement or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

§ 1270.12 County ASCS office report.

(a) *Preliminary report.* The county ASCS office shall notify the State ASCS office by telephone, telegraph, or messenger as to the preliminary results of the referendum as soon as possible. Each county ASCS office may release the unofficial results of the referendum in its county after the report has been given to the State ASCS office.

(b) *Final report.* Within 7 days after the opening of the ballot box, each county ASCS office shall transmit a written summary certified by the county ASCS executive director of the final results of the referendum in its county to the State ASCS office. Any appeal concerning a challenged ballot shall be resolved by the county ASC committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county ASCS office in a conspicuous place accessible to the public and a copy shall be kept on file in the county office for a period of at least 12 months.

§ 1270.13 State ASCS office report.

(a) *Preliminary report.* Each State ASCS office shall send to the Deputy Administrator by telegraph as soon as possible a summary of the preliminary results of the referendum received from the county ASCS offices within its State. Each State ASCS office may release the unofficial results of the referendum in its State after its report has been sent to the Deputy Administrator.

(b) *Final report.* Within 10 days after the opening of the ballot boxes in the county ASCS offices each State ASCS office shall transmit to the Deputy Administrator a written summary of the final results of the referendum received from the county ASCS offices within the State. Such summary shall be prepared in triplicate and certified by the State ASCS executive director. The original and one copy of the summary shall be sent to the Deputy Administrator. One copy of the summary shall be maintained in the State ASCS office where it shall be availabe for public inspection for a period of not less than 12 months.

§ 1270.14 Results of referendums.

(a) The Deputy Administrator shall prepare and submit to the Secretary or his designee a report of the results of the referendum. The official results of the referendum shall be published in the FEDERAL REGISTER. State summaries and related papers shall be available for public inspection in the office of the Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture, Room 243-W, Administration Building, Washington, D.C.

(b) If the Deputy Administrator or the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons that may be designated by the Deputy Administrator or the Secretary.

§ 1270.15 Disposition of ballots and records.

The county ASCS executive director shall place the voted ballots, challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the county ASCS executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator by the end of such time, the records shall be destroyed.

§ 1270.16 Suspension and termination of agreements.

The Secretary of Agriculture may conduct a referendum at any time, and shall hold a referendum on request of (a) producers representing 10 percent or more of the number of producers voting in, or (b) producers owning 10 percent of the sheep or goats, as the case may be, represented in the referendum approving the agreement, to determine whether such producers favor the termination or suspension of the agreement. The Secretary shall suspend or terminate such agreement 6 months after the Secretary determines that suspension or termination of the agreement is approved or favored by a majority of the eligible producers voting in such referendum or who produced more than 50 percent of the volume of the sheep or goats, as the case may be, produced by the producers voting in the referendum.

§ 1270.17 Instructions and forms.

The Deputy Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

APPENDIX I—AGREEMENT BETWEEN THE AMERICAN SHEEP PRODUCERS COUNCIL, INC., AND THE U.S. DEPARTMENT OF AGRICULTURE

AGREEMENT

This agreement is between the U.S. Department of Agriculture and the American Sheep Producers Council, Inc., a nonprofit membership corporation organized under the laws of the State of Illinois (hereinafter referred to as "ASPC"), for the conduct by the ASPC of advertising and sales promotion programs and programs to develop and disseminate information on product quality, production management, and marketing improvement, on a national basis, for wool, sheep, or the products thereof. Such activities shall be financed by deductions from incentive payments to sheep producers made under the National Wool Act of 1954, as amended, (hereinafter referred to as "Act") (7 U.S.C. 1781 et seq.) for wool and sheep marketed during the period commencing January 1, 1978, and ending December 31, 1981.

WITNESSETH

Whereas, the U.S. Department of Agriculture has announced an incentive payment program to producers for wool and sheep marketed during 1978 and it is anticipated that similar programs will be instituted for subsequent marketing years (1979-1981) under the Act;

Whereas, section 708 of the Act authorizes the Secretary of Agriculture to enter into agreements with marketing cooperatives, trade associations or other organizations engaged or whose members are engaged in the handling of wool, sheep, or the products thereof, for the purpose of developing and conducting on a national, State, or regional basis, advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing imporvement for wool, sheep, or the products thereof;

Whereas, section 708 of the Act also provides that the agreements may authorize pro rata deductions from the incentive payments made to sheep producers to defray the expenses for such advertising, sales promotion, and information dissemination programs and for the transfer of such monies to the agency designated in the agreement; and

Whereas, such programs for wool, sheep, or the products thereof have been conducted on a national basis since 1955 in accordance with agreements between the Secretary of Agriculture or his designee and the ASPC;

Now therefore, in order for the ASPC to continue such programs financed by pro rata deductions from incentive payments to sheep producers for the marketing years 1978-1981, the parties hereto agree as follows:

1. Whenever incentive payments are made to sheep producers under the Act, the Administrator, Agricultural Stablization and Conservation Service, U.S. Department of Agriculture, will make a pro rata deduction from such payments and at the direction of the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture ("Administrator, AMS"), pay the amount so deducted to the ASPC to provide the funds necessary to defray the expenses of the ASPC authorized under this agreement. Deductions will be made only from incentive payments, if any, which are made to sheep producers for wool and sheep marketed during the years beginning January 1, 1978, and ending December 31, 1981. Deductions from incentive payments for marketings during calendar year 1978 shall be at the rate if 2½ cents per pound of shorn wool marketed and at a comparable rate, as determined by the Administrator, AMS, on unshorn lambs and yearlings (pulled wool) marketed; thereafter, the deductions shall be at such rates as the Administrator, AMS, and the ASPC may agree upon, but in no event shall the rates be in excess of the rates specified for calendar year 1978.

2. For each fiscal year (July 1-June 30) beginning July 1, 1978, until all funds transferred to the ASPC under this agreement

are expended for programs authorized under this agreement, the ASPC shall develop and submit for approval to the Administrator, AMS, proposed plans and budgets for (a) advertising and sales promotion programs, and (b) programs to develop and disseminate information on product quality, production management, and marketing improvement it intends to undertake for wool, sheep, or the products thereof. Each submission shall describe the annual plan of operation, commodities to be covered by each program, the proposed media, and other methods which the ASPC intends to use in carrying out such programs and the benefits expected to be derived by sheep producers on a national basis. Amendments in program plans and budgets shall be submitted for approval as specified by the Administrator, AMS. Following approval of the general program and budget by the Administrator, AMS, the Administrator, AMS, may require the ASPC to submit plans for specific projects as well as proposed contracts and agreements for approval before the ASPC enters into agreements with advertising and promotional agencies, radio and television stations, and others to effectuate its programs.

3. The ASPC shall furnish the Administrator, AMS, with a statement of its assets and liabilities as of the end of each fiscal year within 60 days after the end of the fiscal year. The ASPC shall also furnish the Administrator, AMS, with an annual report of is activities and a copy of an audit, prepared by an independent Certified Public Accountant, of its operations for each fiscal year, as soon as possible, but not later than 6 months after the end of the fiscal year, and with such other reports and information as the Administrator, AMS, may from time to time request. The ASPC shall keep accurate records of all its transactions, and these records shall be subject to inspection and audit by representatives of the U.S. Department of Agriculture at all times during regular business hours from the date of this agreement until 3 years after the ASPC has completed performance of all contracts made and obligations incurred hereunder.

4. Either party may terminate this agreement with respect to the continuation of all programs hereunder by delivering, or mailing by registered mail, a written notice of such termination effective on the date to be specified therein, but not earlier than 30 days after giving of such notice. If on or after January 1, 1979, the Administrator, AMS, determines upon petition, or referendum of the sheep producers, or otherwise, that this agreement is no longer favored by the required number of sheep producers, the Administrator, AMS, shall terminate the agreement. After the termination of the agreement by either party, no deductions from incentive payments to producers shall be made to defray the expenses of the ASPC under this or prior agreements except as the Administrator, AMS, determines necessary or desirable to effectuate the termination of ASPC's activities and liquidation of the ASPC's funds.

5. Funds obtained by the ASPC pursuant to prior agreements and unobligated on the date when this agreement becomes effective shall become subject to the terms and conditions of this agreement and be available to finance programs authorized by this agreement.

6. Upon completion of all programs under this and prior agreements or upon termination of this agreement by either party, all funds of the ASPC derived from deductions from incentive payments (including interest earned thereon) remaining unobligated in the hands of the ASPC shall be returned to the U.S. Department of Agriculture, together with a statement explaining the various items which entered into the amount being returned. If the ASPC received funds from sources other than the U.S. Department of Agriculture, pursuant to this agreement, the ASPC shall return to the U.S. Department of Agriculture the same proportion of such unobligated funds as the funds contributed by the U.S. Department of Agriculture bear to all funds received by the ASPC. A final statement of the assets and liabilities of the ASPC shall be furnished to the U.S. Department of Agriculture within 60 days after such completion or termination becomes effective.

7. Any amendments or additions to the charter or bylaws of the ASPC shall be subject to the approval of the Administrator, AMS.

8. The authority reserved to the Administrator, AMS, under the provisions of this agreement may be exercised by an official or officials of the Department of Agriculture designated by the Administrator, AMS.

9. During the performance of this agreement, it is further agreed that the ASPC shall comply with the following provisions:

(a) Equal opportunity. (1) The ASPC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin in regard to any position for which the employee or applicant is qualified. The ASPC will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to any of the factors enumerated above. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ASPC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator, AMS, setting forth the provisions of this nondiscrimination clause.

(2) The ASPC will, in all solicitations or advertisement for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The ASPC will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Administrator, AMS, advising the labor union or workers' representative of the ASPC's commitments under section 202 of the Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The ASPC will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations, and relevant orders of the Secretary of Labor.

(5) The ASPC will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administrator AMS, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the ASPC's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this agreement may be cancelled, terminated or suspended in accordance with procedures authorized in Executive Order No. 11246, of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The ASPC will include the provisions of paragraphs (1) through (7) in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor or vendor. The ASPC will take such action with respect to any contract or purchase order as the Administrator, AMS, may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* That in the event the ASPC becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, AMS, the ASPC may request the United States to enter into such litigation to protect the interest of the United States.

(b) Disabled veterans and veterans of the Vietnam era (applicable to all contracts and subcontracts of $10,000 or more as required by the regulations of the Secretary of Labor). (1) The ASPC will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The ASPC agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status in all employment practices such as the following; employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The ASPC agrees that all suitable employment openings of the ASPC which exist at the time of the execution of this agreement and those which occur during the performance of this agreement, including those not generated by this agreement and including those occurring at an establishment of the ASPC other than the one wherein the agreement is being performed, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The ASPC further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

(3) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the ASPC from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office. Such reports shall indicate, (i) the number of individuals hired during the reporting period, (ii) the number of nondisabled veterans of the Vietnam era hired a, (iii) the number of disabled veterans of the

Vietnam era hired, and (iv) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The ASPC shall submit such reports within 30 days after the end of each reporting period wherein any performance is made under this agreement. The ASPC shall maintain copies of the reports submitted until 3 years after ASPC has completed performance of all contracts made and obligations incurred under this agreement, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Administrator, AMS, or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

(5) Whenever the ASPC becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in Colorado of its name and hiring location. As long as the ASPC is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent agreements. The ASPC may advise the State system when it is no longer bound by this clause.

(6) The provisions of paragraphs (2), (3), (4), and (5) of this clause do not apply to openings which the ASPC proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(7) As used in this clause: (i) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. It does not include openings which the ASPC proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances, an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(ii) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(iii) "Openings which the ASPC proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons outside the ASPC organization (including any affiliates) and includes any openings which the ASPC proposes to fill from regularly established "recall" lists.

(iv) "Openings which the ASPC proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the ASPC proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the ASPC and representatives of its employees.

(8) The ASPC agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Assistance Act.

(9) In the event of the ASPC's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(10) The ASPC agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director of the Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Administrator, AMS. Such notice shall state the ASPC's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and rights of applicants and employees.

(11) The ASPC will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the ASPC is bound by terms of the Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(12) The ASPC will include the provisions of this clause in every subcontrct or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to the Act, so that such provisions will be bind-

ing upon each subcontractor or vendor. The ASPC will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs, Department of Labor, may direct to enforce such provisions, including action for noncompliance.

(c) Handicapped workers (applicable to all contracts and subcontracts of $2,500 or more as required by the regulations of the Secretary of Labor). (1) The ASPC will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The ASPC agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

(2) The ASPC agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(3) In the event of the ASPC's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(4) The ASPC agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Administrator, AMS. Such notices shall state the ASPC's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(5) The ASPC will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ASPC is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(6) The ASPC will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The ASPC will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

(d) Convict labor. In connection with the performance of work under this agreement, the ASPC agrees not to employ any person undergoing sentence of imprisonment except as provided by Pub. L. 89-176, September 10, 1965, (18 U.S.C. 4082 (c)(2)) and Executive Order 11755, December 29, 1973.

(e) Utilization of minority business enterprises. (1) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts or agreements.

(2) ASPC agrees to use its best efforts to carry out this policy in the award of its subcontract to the fullest extent consistent with the efficient performance of the agreement. As used in the agreement, the term "minority business enterprise" means a business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American Indians, American-Eskimos, and American Aleuts. ASPC may rely on written representation by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

(f) Certification of nonsegregated facilities (applicable to contracts and subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause). By executing this agreement, the ASPC certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. ASPC certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The ASPC agrees that a breach of this certification is a violation of the Equal Opportunity clause of this agreement. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restraurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis or race, creed, color, or national origin, because of habit, local custom, or otherwise. ASPC further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Whoever knowingly and willfully makes any false, fictitious, or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001 and 15 U.S.C. 714(a).

10. This agreement shall not become effective until and unless the Administrator, AMS, has determined on the basis of a producer referendum, conducted pursuant to 7 CFR chapter XI, Part 1270, Subpart A, that at least two-thirds of the total number of eligible producers voting or producers owning two-thirds of the volume of sheep represented in such referendum approve this agreement.

[43 FR 32122, July 25, 1978]

PART 1280—WHEAT AND WHEAT FOODS RESEARCH AND NUTRITION EDUCATION

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AUTHORITY: Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, Sept. 29, 1977, 7 U.S.C. 3401-3417, unless otherwise noted.

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Wheat and Wheat Foods Research and Nutrition Education Act

SOURCE: 43 FR 51604, Nov. 6, 1978, unless otherwise noted.

§ 1280.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1280.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417.

(b) The term "Department" means the U.S. Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultrual Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act.

(i) The term "proceeding" means a proceeding forming the basis on which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

§ 1280.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to section 1714 of the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereto to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1280.4 Reimbursement of expenses by the Council.

The Council established by the order shall reimburse the Secretary, from assessments, for all the expenses and expenditures, including salaries, which the Secretary determines were incurred by the Government in the preparation of the order or any amendments thereto and for the conduct of any referendum, including a referendum for termination of the order.

§ 1280.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable, in the circumstances: *Provided,* That in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to the Governors of the 50 States of the United States and the mayor of the District of Columbia.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b), (1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1280.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1280.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1280.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1280.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to § 1280.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1280.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1280.5 (relating to the giving of notice of the hearing): *Provided,* That if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1280.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to reply.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested to by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quintuplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That interested persons shall be given adequate notice, at the hearing

or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1280.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1280.9(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1280.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and four copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make to same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1280.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reported and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1280.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefore; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1280.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1280.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law, or discretion presented on the record; (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record; (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1280.16: *Provided,* That such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1280.16 have been met.

§ 1280.16 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of his decision pursuant to § 1280.15: *Provided,* That the issuance of such order shall have been approved or favored by end product manufacturers as required by section 1708 of the Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date thereof.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1280.17 Filing.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quintuplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1280.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided,* That procedural matters and status reports shall not be included within this limitation: *And provided further,* That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1280.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1280.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall thereupon, after due consideration of the record, issue the final decision in the proceeding: *Provided,* That the Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Wheat and Wheat Foods Research and Nutrition Education Order

AUTHORITY: Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 *et seq.*).

SOURCE: 45 FR 32573, May 16, 1980, unless otherwise noted.

DEFINITIONS

§ 1280.101 Wheat.

"Wheat" means all classes of wheat grains grown in the United States.

§ 1280.102 Processed wheat.

"Processed wheat" means the wheat-derived content of any substance (such as cake mix or flour) produced for use as an ingredient of an end product by changing wheat grown within the United States in form or character by any mechanical, chemical, or other means.

§ 1280.103 End product.

"End product" means any product which contains processed wheat as an ingredient and which is intended, as produced, for consumption as human food, notwithstanding any additional incidental preparation which may be necessary by the ultimate consumer.

§ 1280.104 Wheat producer.

"Wheat producer" means any person who grows wheat within the United States for market.

§ 1280.105 Processor.

"Processor" means any person who commercially produces processed wheat within the United States.

§ 1280.106 End product manufacturer.

"End product manufacturer" means any person who commercially produces an end product within the United States, but such term shall not include such persons to the extent that they produce end products on the premises where such end products are to be consumed by an ultimate consumer, including, but not limited to, hotels, restaurants, and institutions, nor shall such term include persons who produce end products for their own personal, family or houshold use.

§ 1280.107 Research.

"Research" means any type of research to advance the nutritional quality, marketability, production, or other qualities of wheat, processed wheat, or end products.

§ 1280.108 Nutrition education.

"Nutrition education" means any action to disseminate to the public information resulting from research concerning the economic value or nutritional benefits of wheat, processed wheat, and end products.

§ 1280.109 Wheat Industry Council or Council.

"Wheat Industry Council" or "Council" means the administrative body established pursuant to § 1280.130.

§ 1280.110 Department.

"Department" means the United States Department of Agriculture.

§ 1280.111 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1280.112 Person.

"Person" means any individual, partnership, corporation, association or other entity.

§ 1280.113 United States.

"United States" means the several States and the District of Columbia, including any territory or possession.

§ 1280.114 Fiscal period.

"Fiscal period" means the calendar year or such other period as the Council may determine.

§ 1280.115 Eligible organization.

"Eligible organization"means any organization or association which has been certified by the Secretary pursuant to § 1280.165.

§ 1280.116 Representative of wheat producers.

"Representative of wheat producers" means a wheat producer, the owner, officer, or employee of a producer, or an officer, or employee of an organization or association representing wheat producers certified under § 1280.165.

§ 1280.117 Representative of processors.

"Representative of processors" means a processor, the owner, officer, or employee of a processor, or an officer, or employee of an organization or association representing processors certified under § 1280.165.

§ 1280.118 Representative of end product manufacturers.

"Representative of end product manufacturers" means an end product manufacturer, the owner, officer, or employee of an end product manufacturer, or an officer or employee of an organization or association representing end product manufacturers certified under § 1280.165.

§ 1280.119 Representative of consumers.

"Representative of consumers" means a consumer, or an officer or employee of an organization or association representing consumers certified under § 1280.165.

§ 1280.120 Part and subpart.

"Part" means 7 CFR Part 1280, containing rules, regulations, orders, supplemental orders and similar matters concerning the Wheat and Wheat Foods Research and Nutrition Education Act. "Subpart" means any portion or segment of such part.

§ 1280.121 Retail baker.

"Retail baker" means an end product manufacturer who sells end products directly to the ultimate consumer: *Provided,* That such term shall not include any end product manufacturer who derives less than 10 per centum of gross end product sales revenues from sales to ultimate consumers or who derives 10 per centum or more of gross food or food product sales revenue from the sale of such products manufactured or produced by others.

§ 1280.122 Intra-company transfers.

"Intra-company transfers" means sales or transfers of processed wheat for use in the manufacture of end products to end product manufacturers from related companies or divisions of the same company.

§ 1280.123 Related companies or divisions of the same company.

"Related companies or divisions of the same company" means subsidiaries, affiliates, or divisions of an end product manufacturer which are controlled by, controlling, or under common control with, such end product manufacturer.

§ 1280.124 Control.

"Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract, or otherwise.

§ 1280.125 Act.

"Act" means the Wheat and Wheat Food Research and Nutrition Education Act (7 U.S.C. 3401 et seq.) and any amendments thereto.

§ 1280.126 Plans and projects.

"Plans and projects" means those research and nutrition education plans, studies or projects pursuant to § 1280.145.

WHEAT INDUSTRY COUNCIL

§ 1280.130 Establishment and membership.

There is hereby established a Wheat Industry Council of twenty members, each of whom shall have a specific alternate. The Council shall be composed equally of representatives of wheat producers, processors, end product manufacturers and consumers, appointed by the Secretary from nominations submitted by eligible organizations certified pursuant to § 1280.165, or from nominations in a manner authorized by the Secretary pursuant to § 1280.132(a).

§ 1280.131 Term of office.

The members of the Council and their alternates shall serve for terms of two years, except appointments to the initial Council shall be proportionately for terms of two and three years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has accepted the position. No member or alternate shall serve more than three consecutive terms in such capacity, but service of three consecutive terms in one capacity will not disqualify any person from appointment in another capacity.

§ 1280.132 Nominations.

All nominations authorized under § 1280.130 shall be made in the following manner:

(a) Within 60 days after approval of this Order by referendum, or such other period as determined by the Secretary, nominations shall be obtained by the Secretary as specified in paragraph (d) of this section from eligible organizations or associations certified pursuant to § 1280.165. However, if the Secretary determines that a substantial number of wheat producers, processors, end product manufacturers or consumers are not members of, or their interests are not represented by, any such eligible organizations or associations, then nominations shall be submitted by such wheat producers, processors, end product manufacturers and consumers in a manner authorized by the Secretary;

(b) After the establishment of the initial Council, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Council members and alternates shall be submitted to the Secretary not less than sixty days prior to the expiration of the terms of the members and alternates whose terms are expiring;

(c) Where there is more than one eligible organization or association repesenting wheat producers, processors, or end product manufacturers within any geographic area, or within any segment of the wheat producing, processing, or end product manufacturing industry, they may caucus for the purpose of jointly nominating two or more qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization or association may submit to the Secretary two or more nominations for each appointment to be made;

(d) In making nominations for such members and their alternates, factors such as those listed below shall be considered in determining equitable representation on the Council:

(1) For wheat producers—class and volume of wheat produced and geographic distribution;

(2) For processors—class of wheat processed, amount of wheat processed and geographic distribution;

(3) For end product manufacturers—the generic type of end product produced by each segment of the end product industry (baked goods, biscuits and crackers, cereals, pasta products) and the percentage each such segment uses of the total processed wheat used by all such segments of the end product industry; and

(4) For consumers—the factors set out in § 1280.165.

§ 1280.133 Appointment.

From the nominations made pursuant to § 1280.132, the Secretary shall appoint the members of the Council, and an alternate for each such member, on the basis of representations provided for in §§ 1280.130, 1280.131 and 1280.132.

§ 1280.134 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Council shall file a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1280.135 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Council, a successor for the unexpired term of such member or alternate member shall be nominated, and appointed in the manner specified in §§ 1280.130, 1280.132(b)(c)(d), 1280.133 and 1280.134, except that replacement of a Council member, or alternate, with an unexpired term of less than six months is not necessary.

§ 1280.136 Alternate members.

An alternate member of the Council, shall act in the place and stead of the member for whom he or she is the alternate during the absence of such member and shall perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and has accepted the position.

§ 1280.137 Procedure.

(a) A majority of the members, including alternates acting for members of the Council, shall constitute a quorum, and any action of the Council shall require the concurring votes of at least a majority of those voting.

(b) For routine and non-controversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Council, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1280.138 Compensation and reimbursement.

The members of the Council and alternates shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Council, incurred by them in the performance of their duties under this subpart.

§ 1280.139 Powers of the Council.

The Council shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1280.140 Duties.

The Council shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Council members, and to adopt such rules for the conduct of its business as it may deem advisable. The Council may also establish advisory committees of persons other than Council members and pay the necessary and reasonable expenses of the members of such committees;

(b) To appoint from its members an executive committee consisting of not less than 4 nor more than 8 members, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Council and within the policies determined by the Council, if such a committee is believed to be necessary or appropriate, and to appoint or employ such persons as it may deem necessary and define the duties and determine the compensation of each;

(c) To develop and submit to the Secretary for approval, research plans or projects and nutrition education plans or projects resulting from research conducted either by the Council or others;

(d) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of research and nutrition education plans or projects, and also including a general description of the proposed research and nutrition education programs contemplated therein;

(e) To prepare a summary of the annual budget, or amendments thereto, including a brief general description of the proposed research and nutrition education programs contemplated therein, which shall, upon approval, be published promptly in the FEDERAL REGISTER.

(f) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time, to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) With the approval of the Secretary, to enter into contracts or agreements for the development and conduct of the activities authorized under § 1280.145 of this subpart and for the payment of the cost thereof with funds collected through the assessments pursuant to § 1280.151. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Council a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary may require;

(h) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1280.151 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(j) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(k) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary or representative of the Secretary may attend such meetings; and

(l) To submit to the Secretary such information pursuant to this subpart as may be requested.

RESEARCH AND NUTRITION EDUCATION

§ 1280.145 Research and nutrition education.

The Council shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for nutrition education, both within the United States and in international markets, with respect to wheat, processed wheat, and end products;

(b) The establishment and conduct of research or studies with respect to sale, distribution, marketing, utilization or production of wheat, processed wheat, and end products and the creation of new products thereof to the end that marketing and utilization of wheat, processed wheat, and end products may be encouraged, expanded, improved, or made more acceptable;

(c) Each plan or project authorized under paragraph (a) or (b) of this section shall be periodically reviewed or evaluated by the Council to insure that each such plan or project contributes to an effective coordinated program of research and nutrition education. If it is found by the Council that any such plan or project does not further the purposes of the Act, then the Council shall terminate such plan or project; and

(d) In carrying out any plan or project, no reference to a private brand or trade name shall be made unless the Secretary determines that such reference will not result in undue discrimination against wheat, processed wheat or end products of other persons. No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1280.150 Expenses.

(a) The Council is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1280.151.

(b) The Council shall reimburse the Secretary, from assessments, for all the expenses and expenditures, including any referendum and administrative costs incurred by the Secretary under the Act, as the Secretary finds are reasonable and likely to be incurred under this subpart during any period specified by the Secretary.

§ 1280.151 Assessments.

(a) Each end product manufacturer shall pay to the Council, pursuant to regulations recommended by the Council and approved by the Secretary, an assessment based on the number of hundredweights of processed wheat purchased, including intra-company transfers of processed wheat with respect to which no assessment has been paid or scheduled for payment, for use in the manufacture of end products, from processors, distributors, or (in the case of such intra-company transfers) related companies or divisions of the same company: *Provided,* That no person, including any end product manufacturer who makes intra-company transfers, shall be required to pay more than one assessment with respect to the same processed wheat, whether or not such processed wheat is further processed by such person: *And provided further,* That the following end product manufacturers shall be exempt from such assessment:

(1) Retail bakers, as defined in § 1280.121, including any end product manufacturer who does not purchase more than 2,000 hundredweights of processed wheat per year for use in the manufacture of end products: *Provided,* That any person exempted under this paragraph may waive such exemption, upon application to and approval by the Council, and thereafter will be treated as a non-exempt end product manufacturer under this subpart unless and until such person requests that such exemption be reinstated.

(2) End product manufacturers who manufacture specified end products, or types or categories thereof, which are exempted under rules or regulations issued pursuant to section 1716 of the Act to the extent of the proc-

essed wheat they purchase for use in the manufacture of such exempted products.

(b) The Council, with the approval of the Secretary, shall set the amount of the assessment, not to exceed five cents per hundredweight of processed wheat purchased or transferred: *Provided, however,* That the assessment rate for the first two years shall not exceed one cent per hundredweight.

(c) In order to enable end product manufacturers to calculate the amount of processed wheat they have purchased, persons selling or transferring processed wheat in combination with other ingredients to such end product manufacturers for use in the manufacture of end products shall disclose to such end product manufacturers the amount or proportion of processed wheat contained in such products, plus or minus 3 per centum.

(d) End product manufacturers shall remit assessments to the Council at such times and in such manner as prescribed by regulations, but in no case shall assessments be required to be remitted more often than quarterly.

§ 1280.152 Refunds.

(a) Subsequent to the publication of the summary of the Council budget, or amendments thereto, provided for under § 1280.140(e), all end product manufacturers not exempt from the assessments under § 1280.151 shall have 60 days each year from the date of publication within which to elect to reserve the right to seek refunds under paragraph (b) of this section. Reserving the right to seek refunds shall be indicated to the Council in writing, by registered or certified mail under such conditions as the Secretary may prescribe. Only those end product manufacturers who make such an election, under the described procedure, shall be eligible for refunds of assessments paid during the one-year period immediately following the expiration of such 60-day period. *Provided,* That, an election made on the basis of a budget amendment shall apply only until the end of the one-year period then in effect with respect to the annual budget.

(b) Notwithstanding any other provision of this subpart, any end product manufacturer who has been subject to and has paid an assessment, but who has reserved the right, under paragraph (a) of this section, to seek a refund, and who is not in favor of supporting the programs as provided for herein, shall have the right to demand and receive from the Council a refund of such assessment: *Provided,* That such demand shall be made by such end product manufacturer in accordance with regulations, and on a form and within a time period, prescribed by the Council and approved by the Secretary and upon submission of proof satisfactory to the Council that the end product manufacturer paid the assessment for which refund is sought, and any such refund shall be made within 60 days after demand is received therefor.

§ 1280.153 Influencing governmental action.

No funds collected by the Council under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

REPORTS, BOOKS AND RECORDS

§ 1280.160 Reports.

Each end product manufacturer subject to this subpart, and other persons subject to section 1705(c) of the Act, shall be required to report to the Council periodically such information as may be required by the regulations recommended by the Council and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of hundredweights of processed wheat purchased, sold, or initially transferred (as described in §§ 1280.122 and 1280.151(a)) for use in the manufacture of end products;

(b) The number of hundredweights of processed wheat on which an assessment was paid; and

(c) The date any assessment was paid.

§ 1280.161 Books and records.

Each end product manufacturer who is subject to this subpart, and other persons subject to section 1705(c) of the Act, shall maintain and make available for inspection by the Council or the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1280.162 Confidential treatment.

All information obtained from such books, records or reports under the Act and this part, and all information pertaining to refund requests and refunds, shall be kept confidential by the Council, all employees of the Council, all officers and employees of the Department, the Council, and by all officers and employees of contracting agencies having access to such information. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administraive hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person,

(b) The publication, by direction of the Secretary, of general statements relating to refunds made by the Council during any specific period, or

(c) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

CERTIFICATION OF ORGANIZATIONS

§ 1280.165 Certification of organizations.

(a) Any organization or association may request the Secretary for certification of eligibility to participate in nominating members and alternate members of the Council to represent wheat producers, processors, end product manufacturers or consumers. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization or association which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to the following:

(1) Geographic territory covered by the organization's active membership;

(2) Nature and size of the organization's active membership, including, in the case of an organization other than a consumer organization, the proportion of the total number of active wheat producers, processors, or end product manufacturers represented by the organization;

(3) The extent to which wheat producer, processor, or end product manufacturer membership, respectively, of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanence of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization; and

(7) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization, other than a consumer organization, shall be whether its membership consists primarily of wheat producers, processors, or end product manufacturers who produce a substantial volume of wheat, processed wheat, or end products, respectively, and whether the organization is based on a primary or overriding interest in the production, processing, or end manufacturing of wheat or wheat products, and the nutritional attributes thereof.

(c) In determining the eligibility of a consumer organization, the primary consideration shall be whether (1) a principal purpose of the organization is to promote consumer interests, consumer research, or consumer education, (2) such organization has a broadly representative constituency of consumers, with active membership participation on a regular basis, and (3) the organization has demonstrated to the Secretary's satisfaction its commitment to the achievement of the objective of the Act.

(d) The Secretary shall certify any organization or association which is found to be eligible under this section and the determination as to eligibility shall be final. After the original certification of organizations, the Secretary will require recertification at least once every five years and the Secretary may require recertification at any time.

MISCELLANEOUS

§ 1280.166 Suspension and termination.

(a) The Secretary shall, whenever it is found that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of end product manufacturers subject to this subpart, to determine whether such manufacturers favor the termination or suspension of the subpart, and the Secretary shall suspend or terminate such subpart within six months after the Secretary determines that suspension or termination of the subpart is approved or favored by a majority of the end product manufacturers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the manufacture of end products or by end product manufacturers who produced end products containing more than 50 per centum of the total processed wheat contained in all end products manufactured during such period by the end product manufacturers voting in the referendum.

§ 1280.167 Proceedings after termination.

(a) Upon the termination of this subpart the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Council under any contracts or agreements entered into by it pursuant to § 1280.140(g); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transfered or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the research or nutrition education plans or projects hitherto authorized.

§ 1280.168 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1280.169 Personal liability.

No member, alternate member or employee of the council shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts either of commission or omission, of such member, alternate or employee, except for acts of dishonesty or willful misconduct.

§ 1280.170 Patents, copyrights, inventions and publications.

Any patents, copyrights, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the wheat and wheat foods industry. Upon termination of this subpart, § 1280.167 shall apply to determine disposition of all such property.

§ 1280.171 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Council, or by any organization or association certified pursuant to section 1714 of the Act, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1280.172 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Procedure for the Conduct of Referendums in Connection With Wheat and Wheat Foods Research and Nutrition Education Order

SOURCE: 44 FR 72888, Dec. 14, 1979, unless otherwise noted.

§ 1280.200 Referendums.

Referendums for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a Wheat and Wheat Foods Research and Nutrition Education Order, or the amendment, continuance, termination, or suspension of such an Order, is favored by end product manufacturers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1280.201 Definitions.

(a) "Secretary" means the Secretary of Agriculture or any other officer or employee of the U.S. Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

(b) "Act" means the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 *et seq.*) and any amendments thereto.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Referendum agent" means the individual or individuals designated by the Administrator to conduct the referendum.

(e) "Person" means any individual, group or individuals, partnership, corporation, association, cooperative, or any other entity.

(f) "Qualified" or "eligible" end product manufacturer means any end product manufacturer as defined in the Order who used at least 2000 hundredweight of processed wheat per year in the manufacture of end products which are subject to assessment and who is not subject to exemption from payment of assessments as a retail baker.

(g) "Order" means the Wheat and Wheat Foods Research and Nutrition Education Order or any amendment thereto promulgated pursuant to the Act with respect to which the Secretary has directed that a referendum be conducted.

(h) "Representative Period" means a consecutive twelve-month period preceding the registration period as designated by the Secretary.

(i) "Registration Period" means a period to be announced for the registration of eligible end product manufacturers who desire to vote in a referendum. The registration period shall end not less than 30 days prior to the first day of the voting period.

(j) "Voting Period" means a 12-day period to be announced for voting in a referendum.

§ 1280.202 Supervision of referendum.

The Referendum Agent shall be in charge of and responsible for conducting each referendum in accordance with this subpart and under supervision of the Administrator.

§ 1280.203 Requirements of referendum.

No Wheat and Wheat Foods Research and Nutrition Education Order or amendment issued under the Act shall become effective unless the Secretary determines: (a) That valid ballots were cast by at least 50 percent of the eligible end product manufacturers registered to vote, and (b) that the issuance of such Order is approved or favored by not less than two-thirds of the end product manufacturers casting valid ballots in such referendums or by a majority of the end product manufacturers voting in such referendum if such majority manufactured end products containing not less than two-thirds of the total processed wheat contained in all end products manufactured during the representative period by those voting in the referendum.

§ 1280.204 Computation of time.

Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action: *Provided*, That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1280.205 Public notice.

Advance public notice of the referendum shall be provided by the Administrator (a) by utilizing, without advertising expense, available public information media to announce the dates for registration and voting, eligibility requirements and other pertinent information, and (b) by such other means as the Administrator may deem advisable.

§ 1280.206 Eligibility.

(a) *Eligible end product manufacturer.* Each end product manufacturer who, during the representative period, used at least 2000 hundredweight of processed wheat in the manufacture of end products which are subject to assessment, and who is not subject to exemption from payment of assessments as a retail baker, is entitled to register and to cast one vote in the referendum. Related companies or divisions of the same company as defined in the Order shall not be entitled to cast individual ballots in the referendum.

(b) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate end product manufacturer, or any guardian, administrator, executor, or trustee of the estate of an end product manufacturer, or an authorized representative of any end product manufacturing entity other than an individual proprietor, such as a corporation or partnership may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any end product manufacturing entity shall certify that the individual is authorized by such entity to take such action.

§ 1280.207 Registration.

(a) *Registration procedure.* The referendum agent will mail registration forms and instructions and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the Order to end product manufacturers thought to be eligible and whose name and address are known to the referendum agent. The registration material will also be mailed to any end product manufacturer who believe they are eligible and requests such material. To register, an end product manufacturer must complete the registration form and mail it to the referendum agent during the registration period. A registration form shall be considered received during the registration period if it was postmarked not later than midnight on the final day of the registration period and was received by the referendum agent prior to the close of business on the fourth day after the close of the registration period. At the time of registration each end product manufacturer shall certify to the referendum agent, in the manner prescribed, the amount of processed wheat contained in the assessable end products manufactured by such end product manufacturer during the representative period. No person who claims to be eligible to register shall be refused a registration form.

(b) *List of registered end product manufacturers.* The referendum agent shall determine which end product manufacturers are eligible to vote in the referendum and publish the list of eligible voters in the FEDERAL REGISTER. The list shall include all persons who submitted a valid registration form in a timely manner. The eligibility of any person appearing on this list may be challenged under § 1280.209.

§ 1280.208 Voting.

Voting instructions and ballots shall be mailed just prior to the voting period by the referendum agent to eligible end product manufacturers who have resistered with the agent. No person who has filed a registration form and claims to be qualified to vote shall be refused a ballot. Each registered end product manufacturer shall cast his or her ballot on the form provided for that purpose by mailing it to the referendum agent during the voting period. A ballot shall be considered to have been received during the voting period if it was postmarked not later than midnight on the final day of the voting period and was received by the referendum agent prior to the close of business on the fourth day after the close of the voting period. The ballot shall be marked to indicate "yes" or "no," to signify approval or disapproval of the Order. The ballot shall also be marked to include the amount of processed wheat used in the manufacture of end products which are subject to assessment and must be signed by the end product manufacturer. Ballots received by the referendum agent shall be kept in the agent's custody or secured at all times until they are disposed of pursuant to § 1280.212.

§ 1280.209 Challenge of eligibility.

(a) *Who may challenge.* A person's eligibility to register and vote may be challenged by any person. The referendum agent shall review all registrations and promptly challenge any registrant who appears to be ineligible. Any challenge of a person's eligibility to register and vote must be made prior to the end of the voting period.

(b) *Determination of challenges.* Any person whose eligibility to register and to vote has been challenged must prove to the satisfaction of the referendum agent that he or she was an eligible end product manufacturer during the representative period. Record such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is a qualified end product manufacturer. The referendum agent shall make a determination concerning the eligibility of an end product manufacturer who has been challenged as soon as practicable, and in all cases before the opening of the ballots.

(c) *Challenged ballot.* A person whose eligibility to register or to vote has been challenged but not resolved by the referendum agent, if on appeal, may be allowed to cast a ballot, but such ballot shall be considered a challenged ballot for the purpose of the referendum until a resolution of the challenge has been made. A challenged ballot shall be determined to have been resolved if no appeal is taken from the determination of the referendum agent within the time allowed for appeal or there has been a determination by the Administrator after appeal.

(d) *Appeal.* Appeal from a decision by the referendum agent on the eligibility of a person to register or vote must be made to the Administrator within three business days after notification of such decision. An appeal shall be determined by the Administrator as soon as practicable, but in all cases not later than 5 days after the opening of the ballots.

§ 1280.210 Canvassing ballots.

(a) *Counting the ballots.* As soon as possible after the start of business on the fifth day after the close of the voting period, the referendum agent shall open and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible end product manufacturers casting valid ballots, (2) number of eligible end product manufacturers favoring the Order, (3) number of eligible end product manufacturers not favoring the Order, (4) the amount of processed wheat contained in the end products manufactured by end product manufacturers in each of the preceding three categories, (5) the number of challenged ballots deemed invalid, and (6) the number of spoiled ballots.

(b) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, incomplete, mutilated, or marked in such a way that it cannot be determined whether the ballot is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this subpart or as the Secretary may direct. The public may witness the opening of the ballots and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

§ 1280.211 Results of the referendum.

(a) The Administrator shall prepare and submit to the Secretary or the Secretary's designee a report of the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given and other information pertinent to analysis of the referendum and its results. The official results of the referendum shall be published in the FEDERAL REGISTER. Summaries and related papers shall be available for public inspection in the office of the Director, Livestock, Poultry, Grain, and Seed Division, AMS, U.S. Department of Agriculture, Room 2631, South Building, Washington, D.C.

(b) If the Administrator or the Secretary deems it necessary, the report of the results of the referendum shall be reexamined and checked by such persons as may be designated by the Administrator or the Secretary.

§ 1280.212 Disposition of ballots and records.

The referendum agent shall place the registration forms, list of registrants, eligible voter lists, voted ballots, challenged registration forms and challenged ballots found to be ineligible, spoiled ballots, and summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the referendum agent for a period of 12 months after the referendum. If no notice to the contrary is received from the Administrator by the end of such time, the records shall be destroyed.

§ 1280.213 Suspension and termination of order.

The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of end product manufacturers subject to the Order, to determine whether such manufacturers favor the termination or suspension of the Order. The Secretary shall suspend or terminate such Order within six months after the Secretary determines that suspension or termination of the Order is approved or favored by a majority of end product manufacturers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the manufacture of end products or by end product manufacturers who produced end products containing more than 50 percent of the total processed wheat contained in all end products manufactured during such period by the end product manufacturers voting in the referendum.

§ 1280.214 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Order

AUTHORITY: Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 7 U.S.C. 3401-3417.

SOURCE: 45 FR 76638, Nov. 19, 1980, unless otherwise noted.

§ 1280.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1280.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Wheat and Wheat Foods Research and Nutrition Education Act and as it may be amended (Pub. L. 95-113, 7 U.S.C. 3401 et. seq.);

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom they may hereinafter be delegated the authority to act in the Secretary's stead;

(d) The term "Administrative Law Judge" or "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead;

(f) The term FEDERAL REGISTER means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and act supplementary thereto and amendatory thereof;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity, subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 1710(a) of the Act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(k) The term "party" includes the Department;

(l) The term "Hearing Clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) The term "Administrative Law Judge's report" means the Administrative Law Judge's report to the Secretary and includes the Administrative Law Judge's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions, and orders submitted by the parties; and

(n) The term "petition" includes an amended petition.

§ 1280.252 Institution of proceeding.

(a) *Filing and service of petition.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with the law, shall file with the Hearing Clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively;

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms and provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition.

(c) *Application to dismiss petition*—(1) If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 calendar days after the filing of the petition file with the Hearing Clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this section. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such application, including any memorandum of law, must be filed by the petitioner with the Hearing Clerk not later than 20 calendar days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the application to the Judge for consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration shall render a decision upon the motion stating the reasons for the action. Such decision shall be in the form of an order and shall be filed with the Hearing Clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65, incorporated by paragraph (d) of this section: *Provided,* That within 20 calendar days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the Act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the Hearing Clerk not later than the time fixed for filing

papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the orders shall be governed by §§ 900.52a through 900.71 excluding § 900.70 of the title "Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Marketing Orders" revised October 29, 1973, and any amendments thereto, except that all references to marketing orders shall mean the Order under the Act, and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference.

Subpart—Rules and Regulations

AUTHORITY: Wheat and Wheat Foods Research and Nutrition Education Act, Title XVII, Pub. L. 95-113, 91 Stat. 1037 (7 U.S.C. 3401-3417).

SOURCE: 46 FR 22884, Apr. 21, 1981, unless otherwise noted.

DEFINITIONS

§ 1280.300 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401 et seq.), hereinafter called the Act, and the Wheat and Wheat Foods Research and Nutrition Education Order (7 CFR 1280.101 et seq.), hereinafter called the Order.

(a) *Wheat.* "Wheat" means all classes of wheat grains grown in the United States.

(b) *Processed wheat.* "Processed wheat" means the wheat-derived content of any substance (such as cake mix or flour) produced for use as an ingredient of an end product by changing wheat grown within the United States in form or character by any mechanical, chemical, or other means.

(c) *End product.* "End product" means any product which contains processed wheat as an ingredient and which is intended, as produced, for consumption as human food, notwithstanding any additional incidental preparation which may be necessary by the ultimate consumer.

(d) *Processor.* "Processor" means any person who commercially produces processed wheat within the United States.

(e) *End product manufacturer.* "End product manufacturer" means any person who commercially produces an end product within the United States, but such term shall not include such persons to the extent that they produce end products on the premises where such end products are to be consumed by an ultimate consumer, including, but not limited to, hotels, restaurants, and institutions, nor shall such term include persons who produce end products for their own personal, family or household use.

(f) *Research.* "Research" means any type of research to advance the nutritional quality, marketability, production, functional quality or other qualities of wheat, processed wheat, or end products.

(g) *Nutrition education.* "Nutrition education" means any action to disseminate to the public information resulting from research concerning the economic value or nutritional benefits of wheat, processed wheat, and end products.

(h) *Wheat Industry Council or Council.* "Wheat Industry Council" or "Council" means the administrative body established pursuant to § 1280.130 of the Order.

(i) *Fiscal period.* "Fiscal period" means the calendar year or such other period as the Council may determine.

(j) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

(k) *Person.* "Person" means any individual, partnership, corporation, association or other entity.

(l) *Part and subpart.* "Part" means 7 CFR Part 1280, containing rules, regulations, orders, supplemental orders and similar matters concerning the Wheat and Wheat Foods Research and Nutrition Education Act. "Subpart" means any portion or segment of such part.

(m) *Retail baker.* "Retail baker" means an end product manufacturer who sells end products directly to the ultimate consumer: *Provided,* That such term shall not include any end product manufacturer who derives less than 10 per centum of gross end product sales revenues from sales to ultimate consumers or who derives 10 per centum or more of gross food or food product sales revenue from the sale of such products manufactured or produced by others.

(n) *Intra-company transfers.* "Intra-company transfers" means sales or transfers of processed wheat for use in the manufacture of end products to end product manufacturers from related companies or divisions of the same company.

(o) *Related companies or divisions of the same company.* "Related companies or divisions of the same company" means subsidiaries, affiliates, or divisions of an end product manufacturer which are controlled by, controlling, or under common control with, such end product manufacturer.

(p) *Control.* "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract, or otherwise.

(q) *Plans and projects.* "Plans and projects" means those research and nutrition education plans, studies or projects pursuant to § 1280.145 of the Order.

(r) *Scheduled for payment.* "Scheduled for payment" means set aside on the books and records of an end product manufacturer, so that once an end product manufacturer has scheduled for payment the assessment on processed wheat, at the point of the original purchase or intra-company transfer of such processed wheat, it will not be required to maintain further records of subsequent intra-company transfers of such processed wheat: *Provided,* That such end product manufacturer must maintain records of such transfers to the extent necessary to support any claim for exemption from assessments under § 1280.316(b).

(s) *Distributor of processed wheat.* "Distributor of processed wheat" means any person who sells processed wheat to an end product manufacturer.

GENERAL

§ 1280.305 Communications.

Communications in connection with the Order shall be addressed to the Wheat Industry Council at its business address.

§ 1280.306 Policy and objectives.

(a) It shall be the policy of the Wheat Industry Council to carry out an effective and continuous coordinated program of research and nutrition education, designed to improve and enhance the quality, and make the most efficient use, of American wheat, processed wheat, and wheat end products, and to inform the people of the United States about the nutritional benefits of wheat foods.

(b) It shall be the objective of the Wheat Industry Council to carry out plans and projects which will provide the maximum benefits to the wheat and wheat foods industry and no undue preference shall be given to any of the various industry segments.

(c) It shall be the objective of the Wheat Industry Council in carrying out this program to promote the health and well being of consumers.

§ 1280.307 Contracts.

The Council, with the approval of the Secretary, may enter into contracts with persons for the development and conduct of plans or projects authorized by the Order. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Council shall be subject to the provisions of this subpart.

§ 1280.308 Procedure.

The organization of the Wheat Industry Council and the procedure for conducting meetings of the Council shall be in accordance with the By-Laws of the Council.

§ 1280.309 USDA costs.

Pursuant to § 1280.150(b) of the Order, the Council shall reimburse those referendum and administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Act and the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

ASSESSMENTS, COLLECTIONS AND REMITTANCES

§ 1280.315 Levy of assessments.

(a) An assessment of 5 cents per hundredweight of processed wheat, or such lesser amount as set by the Council and approved by the Secretary, hereinafter called the assessment, is hereby levied on each hundredweight of processed wheat purchased (including intra-company transfers of processed wheat with respect to which no assessment has been paid or scheduled for payment) on and after June 1, 1981, by nonexempt end product manufacturers for use in the manufacture of nonexempt end products as specified in § 1280.315(b): *Provided,* That the assessment rate for the first two years during which assessments are in effect shall not exceed 1 cent per hundredweight. No person shall be required to pay more than one assessment with respect to the same processed wheat, whether or not such processed wheat is further processed by such person.

(b) The following end products in which wheat is a major or characterizing ingredient, as described in the Standard Industrial Classification (SIC) codes published by the U.S. Department of Commerce, shall be subject to the assessment levied hereunder:

SIC No.	
2032	Macaroni, canned.
	Ravioli, canned.
	Spaghetti, canned.
2038	Baked goods, frozen.
	Pies, frozen (except meat).
	Pizza, frozen.
	Spaghetti and meat balls, frozen.
	Waffles, frozen.
2041	Dough, biscuit: canned.
	Doughs, refrigerated.
2043	Breakfast foods, cereal (wheat based).
	Wheat flakes.
2045	Dough, biscuit: canned.
	Doughs, refrigerated.
2051	Bagels.
	Bakery products, partially cooked, except frozen (frozen are included in SIC No. 2038).
	Bakery products, "perishable": Bread, cakes, doughnuts, pastries, etc. (including croutons).
	Biscuits, baked: baking powder and raised.
	Bread, brown: Boston and other—canned.
	Buns (bakery products).
	Charlotte Russe (bakery products).
	Crullers.
	Knishes.
	Pastries: Danish, French, etc.
	Pies, except meat pies.
	Rolls (bakery products).
	Sweet yeast goods.
2052	Bakery products, "dry": biscuits, crackers, pretzels, etc.
	Biscuits, baked: dry, except baking powder and raised biscuit (which are included in SIC No. 2051).
	Cookies.
	Crackers: Graham, soda, etc.
	Saltines.
	Zwieback, machine-made.
2098	Macaroni and products, dry: including alphabets, rings, seashells, etc.
	Noodles: egg, plain and water.
	Spaghetti, except canned (canned is included in SIC No. 2032).
	Vermicelli.
2099	Pizza, refrigerated, except frozen (frozen is included in SIC No. 2038).

§ 1280.316 Exemptions.

(a) The following persons shall be exempt from the assessment levied under § 1280.315:

(1) Retail bakers, as defined in § 1280.300(m), and any end product manufacturer who does not purchase more than 2,000 hundredweights of processed wheat per year for use in the manufacture of end products; and

(2) End product manufacturers who manufacture end products exempted under § 1280.316(b), *Provided,* That such end product manufacturers shall be exempt only to the extent of the processed wheat purchased for use in the manufacture of such exempt end products.

(b) "End products" in which wheat is not a major or characterizing ingredient and not listed in § 1280.315(b) shall be considered exempt end products for the purposes of § 1280.316(a)(2). Such end products shall include, but shall not be limited to, the following end products described in the Standard Industrial Classification (SIC) codes published by the U.S. Department of Commerce:

SIC No.	
2032	Meat pies, canned.
2034	Soup mixes and powders.
2035	Sauces.
2038	Frozen dinners (complete).
2052	Cones, ice cream.
2085	Distilled, rectified, and blended liquors.

§ 1280.317 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar quarter or a 3-month accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Council in writing: *Provided*, That the first reporting period will be June 1, 1981, to June 30, 1981, or a Council approved comparable period. Each end product manufacturer not exempt under § 1280.316(a) shall register his reporting period with the Council. All changes in reporting periods shall be requested in writing and subject to approval by the Council.

(b) Each end product manufacturer shall pay the required assessment pursuant to § 1280.315 directly to the Wheat Industry Council, for each period, on or before the thirtieth day following the end of such period. Assessments shall begin to accrue as of June 1, 1981, for those end product manufacturers reporting on a calendar quarter basis. (For those using other Council approved accounting periods assessments shall begin to accrue as of the first day of the first accounting period beginning on or after June 1, 1981.) Thus, for example, those end product manufacturers reporting on a calendar quarter basis must begin as of June 1 to calculate and set aside on their books and records the amount of the assessment payable for the June 1 to June 30 period. For these end product manufacturers the initial assessment must be remitted on or before July 30, 1981. Payment shall be in the form of a check, draft or money order payable to the Wheat Industry Council and shall be accompanied by a report pursuant to § 1280.326(a).

(c) In the event of an end product manufacturer's death, bankruptcy, receivership, or incapacity to act, the representative of the end product manufacturer or his estate, or the person acting on behalf of creditors, shall be considered the end product manufacturer for the purposes of this subpart.

REFUNDS

§ 1280.320 Budget summaries, refund elections, and election periods.

(a) Under § 1280.140(e) of the Order, the Council is required to prepare a summary of its annual budget, including a brief general description of research and nutrition education programs contemplated therein (hereafter the budget summary). Upon approval by the Secretary, the budget summary is to be published promptly in the FEDERAL REGISTER. The Council's initial budget summary, for its initial fiscal period, shall be published at least 60 days prior to the date when the initial assessments are due to be remitted under § 1280.315. In subsequent fiscal periods the budget summary shall be published at least 60 days prior to the beginning of the fiscal period.

(b) With the publication of each budget summary under § 1280.320(a) (or amended budget summary under § 1280.320(d)), the Council shall promptly mail a copy thereof to each registered end product manufacturer.

(c) Each such registered end product manufacturer shall have 60 days each year from the date of publication of the budget summary in the FEDERAL REGISTER, (hereafter referred to as the refund election period) within which to elect to reserve the right to seek refunds under § 1280.322 of assessments paid with respect to the fiscal period covered by such budget summary, whether or not such person has personally received a copy of the budget summary.

(d) Ordinarily, one budget summary for each fiscal period will be published at least 60 days prior to the beginning of the fiscal period. However, in the event of midyear amendments to the budget so significant as to substantially change the nature of the Council's ongoing plans and projects, an amended budget summary, upon approval by the Secretary, will be published promptly in the FEDERAL REGISTER. Thereafter, all nonexempt end product manufacturers, whether or not they have a refund election then in effect, will be given 60 days from the date of such publication within which to elect to reserve the right to seek refunds under § 1280.322 of assessments paid with respect to the balance of the fiscal period then in effect including the quarter in which the amended budget summary was published.

(e) Nonexempt end product manufacturers who wish to elect to reserve the right to request refunds of assessments under § 1280.322 shall so indicate to the Council by letter, which shall be transmitted to the Council by registered or certified mail, and which must be postmarked not later than the sixtieth day of the applicable refund election period (or the next succeeding business day if such sixtieth day falls on a Saturday, Sunday or Holiday).

§ 1280.321 Eligibility for refunds.

Only those end product manufacturers who have made the described election pursuant to § 1280.320 shall be eligible for refunds of assessments paid with respect to the fiscal period, or (in the case of budget amendments under § 1280.320(d)) portion thereof, to which such refund election applies.

§ 1280.322 Procedure for obtaining refunds.

Any end product manufacturer who has been subject to and has paid an assessment, but who has elected to reserve the right to seek a refund, may obtain a refund of the assessment for any quarter or other reporting period in the following manner:

(a) Every refund request must be made by submitting to the Council a completed Wheat Industry Council refund application form. The form shall be obtained by written request to the Council and shall require the following information:

(1) The end product manufacturer's name(s), address(es), and identification number;

(2) The number of hundredweights of processed wheat on which a refund is requested and the total amount of the refund request;

(3) The date or dates on which assessments were paid;

(4) The end product manufacturer's signature; and

(5) An affirmation that the end product manufacturer has made the necessary election to reserve the right to request refunds. A separate refund application must be filed for assessments paid in each reporting period.

(b) Every refund application must be mailed to the Wheat Industry Council within 60 days after the end of the quarter or other reporting period during which the assessment obligation accrued.

(c) Within 60 days following the date of receipt by the Council of each properly executed refund application, and proof of payment of the assessment, the Council shall remit the refund.

REGISTRATION AND REPORTS

§ 1280.325 Registration of end product manufacturers.

(a) All end product manufacturers not exempt under § 1280.316 shall, prior to June 1, 1981, register with the Wheat Industry Council by filing a registration statement. Registered end product manufacturers will receive an identification number which must appear on all required reports and official communications with the Wheat Industry Council.

(b) End product manufacturers who are exempt from assessments under § 1280.316 will not be required to register with the Council. However, any such exempt end product manufacturer receiving a registration form shall return the form to the Council indicating thereon his exempt status and the basis for it. Such exempt end product manufacturers shall not be required to submit further proof of their exempt status except upon specific written request of the Council.

(c) New businesses subject to this subpart beginning after June 1, 1981, shall register with the Wheat Industry Council within 30 days following the beginning of operations.

(d) Each registration statement hereunder shall include:

(1) Name and address of the end product manufacturer;

(2) Name of individual(s) responsible for filing reports with the Wheat Industry Council;

(3) Type of reporting period desired; and

(4) For exempt end product manufacturers, spaces for indicating exempt status, the basis for such exempt status, and whether the end product manufacturer wishes to waive exempt status.

(e) Any person exempt under § 1280.316 may waive such exemption, upon application to and approval by the Council, and thereafter will be treated as a nonexempt end product manufacturer under this subpart unless and until such person requests that such exemption be reinstated.

§ 1280.326 Reports.

(a) End product manufacturer reports.

(1) Each nonexempt end product manufacturer shall make reports to the Wheat Industry Council on forms made available or approved by the Council. Each such end product manufacturer shall prepare a separate report form for each reporting period, which shall be mailed to the Council within 30 days after the close of the reporting period, and which shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by report;

(iii) Name and address of end product manufacturer and identification number;

(iv) Total number of hundredweights of processed wheat purchased (including intra-company transfers), for use in the manufacture of any end products listed in § 1280.315(b) and on which an assessment was not previously collected;

(v) The total amount of assessment due for processed wheat purchased or transferred during the reporting period and remitted with the report; and

(vi) Such other information as may be required by the Council.

(2) End product manufacturer reports shall be filed each reporting period until such time as the Wheat Industry Council is notified in writing that the end product manufacturer has ceased to do business.

(b) In order to enable end product manufacturers to calculate the amount of processed wheat they have purchased, persons selling or transferring processed wheat in combination with other ingredients to such end product manufacturers for use in the manufacture of end products shall disclose to such end product manufacturers the amount or proportion of processed wheat contained in such products, plus or minus 3 per centum. End product manufacturers shall be responsible for informing persons selling or transferring to them processed wheat in combination with other ingredients of such persons' obligations under this subpart to disclose the amount or proportion of processed wheat therein, plus or minus 3 per centum.

(c) The Wheat Industry Council may require all persons subject to section 1705(c) of the Act to make reports as needed for the enforcement and administration of this part.

RECORDS

§ 1280.330 Retention of records.

Each person required to make reports to the Wheat Industry Council pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(a) One copy of each report submitted to the Council; and

(b) Such other records as are necessary to verify reports submitted to the Council.

§ 1280.331 Availability of records.

Each end product manufacturer subject to the provisions of this subpart, and all persons subject to section 1705(c) of the Act, shall make available for inspection and copying by authorized employees of the Wheat Industry Council and/or the Secretary, during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1280.332 Confidentiality.

(a) All information obtained by the Wheat Industry Council, all employees of the Council, officers and employees of the Department of Agriculture, or any person under contract to the Council or otherwise acting on behalf of the Council, from the books, records and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual end product manufacturers, shall be kept confidential in the manner, and to the extent, provided for in § 1280.162 of the Order.

(b) In order to protect confidential information that may reveal trade secrets or have competitive value, access to information from the books, records and reports of persons subject to this subpart shall be limited to persons within the class described in § 1280.332(a) who have a specific need for such information in order to administer the provisions of the Order and of this subpart.

MISCELLANEOUS

§ 1280.335 Personal liability.

No member, alternate member or employee of the Council in the performance of his or her duties with the Council shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate or employee, except for acts of dishonesty or willful misconduct.

PART 1290—REFERENDA PROCEDURES

Subpart—Procedure for the Conduct of Referenda in Connection With Floral Research and Consumer Information Order

Sec.
1290.200 General.
1290.201 Definitions.
1290.202 Voting.
1290.203 Instructions.
1290.204 Subagents.
1290.205 Ballots.
1290.206 Referendum report.
1290.207 Confidential information.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

1290.250 Words in the singular form.
1290.251 Definitions.
1290.252 Institution of proceeding.

AUTHORITY: Pub. L. 97-98, 7 U.S.C. 4301-4319.

SOURCE: 48 FR 51427, Nov. 9, 1983, unless otherwise noted.

Subpart—Procedure for the Conduct of Referenda in Connection With Floral Research and Consumer Information Order

§ 1290.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination or suspension of a Floral Research and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1290.201 Definitions.

As used in this subpart, terms shall have the same meaning as defined in the Act and order unless modified by this section or unless context otherwise requires:

(a) "Act" means the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301-4319.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and Department means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) "Order" mean the order (including an amendment to an order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to Section 1709 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to, (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing or importing of flowers and plants for market and the authority to transfer title to the flowers and plants so produced or imported.

(h) "Flowers and plants" means those types or varieties of potted flowering plants and foliage plants (plus plant material used in their propagation) used primarily for interior decoration, and all cut flowers and all plant material used in the propagation of cut flowers. It does not include bedding plants, exterior landscape plants, or any other exterior plant material.

(i) Under this subpart, "eligible producer" means any person who produces domestically flowers and plants for interior use, with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period and who: (1) Owns and farms land (or a greenhouse), resulting in the ownership of the flowers and plants produced there; (2) rents and farms land, resulting in the ownership of all or a portion of the flowers and plants produced thereon; (3) owns land which the person does not farm and, as rental for such land, obtains the ownership of a portion of the flowers and plants produced thereon; or (4) is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce flowers and plants who share the risk of loss and receive a share of the flowers and plants produced. No other acquisition of legal title to flowers and plants shall be deemed to result in persons becoming producers.

(j) under this subpart, "eligible importer" means any person engaged in the importation of flowers and plants with total sales thereof exceeding $100,000 during the 12 consecutive months of the representative period. An importer is any person responsible for making the first sales transaction of commodities originating outside the United States once they are released from Customs by the U.S. Customs Service. Among those included as "eligible importers" are agents, consignees or brokers, acting on behalf of foreign producers or foreign exporters, who make the first sales transaction which introduces flowers and plants into commerce upon release by the Customs Service.

(k) For the purpose of determining whether a producer or importer is eligible to vote in a referendum under this subpart, "total sales" is defined as a producer's or importer's total dollar amount of sales of flowers and plants primarily used for interior decoration. Specifically excluded are the sales of plants likely to be used outdoors, such as nursery, vegetable, and bedding plants. Also excluded are the sales of accessory items, such as decorative baskets and ceramic pots, that are not necessary to the sale of flowers and plants, and have usefulness independent of the commodities they are sold with. For the purpose of this section, a producer's or importer's total sales shall include, in those cases in which the producer or importer is an individual, sales attributable to such person's spouse, children, grandchildren, and parents; in those cases in which the producer or importer is a partnership or a member of a partnership, sales attributable to the other partners; and, in those cases in which the producer or importer is a corporation, sales attributable to any corporate subsidiaries of which such corporation owns 50 per centum or more of the stock, or if such subsidiaries are not corporations, subsidiaries which are controlled by such corporation. In addition, in determining a producer's or importer's total sales, the sales of any corporation in which such producer or importer owns 50 per centum or more of the stock shall be attributed to such producer or importer. For these purposes stock in the same corporation which is owned by such producer's or importer's spouse, children, grandchildren, parents, partners, and any corporation 50 per centum or more of whose stock is owned by the producer or importer shall be treated as owned by the producer or importer.

(l) "Floraboard" means the administrative board provided for under section 1701 of the Act.

§ 1290.202 Voting.

(a) Only a person who is an eligible producer or eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to a vote in the referendum. However, each such party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce flowers and plants, in which each has a proprietary interest, including sharing in the risk of loss in the flowers and plants produced by the venture, shall be entitled to one vote in the referendum covering only his or her share of the ownership of the flowers and plants resulting from such venture.

(b) Proxy voting is not authorized but an officer or employee of a corporate eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1290.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the cumulative total acreage or square footage of flowers and plants produced by the voting producer during the representative period with the total sales value thereof, (3) the total quantity and total sales value of flowers and plants imported during the representative period, and (4) in a joint venture, names of the parties and each one's share of ownership of the resulting flowers and plants.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media or public information sources (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: Except that no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1290.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to eligible producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and check the eligibility of such person to vote in the referendum.

§ 1290.205 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1290.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1290.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential except that the issuance of general statements regarding referendum results shall not be prohibited provided that information furnished by any one person is not disclosed.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

§ 1290.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1290.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Floral Research and Consumer Information Act, Pub. L. 97-98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301 to 4319;

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any administrative law judge in the Office of Administrative Law Judges, U.S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501 to 1511), and acts supplementing and amending it;

(g) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(h) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) The term "proceeding" means a proceeding before the Secretary arising under section 1714(a) of the Act;

(j) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(k) The term "party" includes the Department;

(l) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.;

(m) The term "presiding officer" means the administrative law judge conducting a proceeding under this Act;

(n) The term "presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties;

(o) The term "petition" includes an amended petition.

§ 1290.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its of-

ficers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition—Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from plans shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or to Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

CROSS REFERENCE: For regulations relative to standards, inspections, and marketing practices, see Chapter I of this title.

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PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

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AUTHORITY: Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1055, as amended, 7 U.S.C. 1427.

SOURCE: 19 FR 6669, Oct. 16, 1954, unless otherwise noted. Redesignated at 28 FR 579, Jan. 23, 1963.

§ 1402.101 General.

To facilitate trade in private trade channels, the Commodity Credit Corporation will disseminate general sales offering information via press release. Since carrying charges must be incorporated in statutory minimum prices for certain commodities and since such carrying charges are conveniently accrued on a monthly basis, a Monthly Sales List will be published in press release form. The Monthly Sales List will be completely revised and republished by press release at the beginning of each month and amended as necessary during the month. The Commodity Credit Corporation reserves the right to make any amendments deleting or adding to the provisions of the Monthly Sales List or changing prices or methods of sale, including but not limited to, changes in the minimum price percentage, markups and carrying charges. These lists are issued for the purpose of public information and do not constitute an offer to sell by the Commodity Credit Corporation or an invitation for offers to purchase from the Corporation. The Monthly Sales List will set forth either the prices or the pricing basis at which commodity holdings of the Commodity Credit Corporation are available for sale for domestic unrestricted use, for export, and redemption of payment-in-kind certificates. Information concerning barter and credit will also be included. To be placed on the mailing list for the Monthly Sales List press release, applications should be made to the Director, Inventory Managment Division, ASCS, USDA, Washington, DC 20013.

[44 FR 37600, June 28, 1979]

§ 1402.102 Submission of offers, terms and conditions.

The Commodity Credit Corporation will entertain offers from prospective buyers for the purchase of any commodities on the current lists. Offers accepted by Commodity Credit Corporation will be subject to terms and conditions prescribed by the Corporation. These terms include, among others, payment by cash or irrevocable letter of credit before delivery of the commodity, removal of the commodity from Commodity Credit Corporation storage within a reasonable period of time, and, in sales for export, proof of exportation.

§ 1402.103 Information.

The terms and conditions of sale with respect to any commodity appearing on the monthly lists will be furnished upon request, addressed to the Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, DC 20250.

§ 1402.104 Other sales.

The general policy of Commodity Credit Corporation of making sales on a competitive or negotiated basis will continue to apply to all sales not covered by this announcement. Inquiries with respect to such sales may be addressed to the Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, DC 20250.

PART 1403—INTEREST ON DELINQUENT DEBTS

Sec.
1403.1 Purpose.
1403.2 Definitions.
1403.3 Late payment charge.
1403.4 Partial payments.

Sec.
1403.5 Amount of late payment charge.
1403.6 Applicability.

AUTHORITY: Sec. 4, Pub. L. 80-89, 62 Stat. 1070, as amended (15 U.S.C. 714b), 4 CFR Parts 101-105.

SOURCE: 46 FR 61443, Dec. 17, 1981 and 47 FR 37075, Aug. 25, 1982, unless otherwise noted.

§ 1403.1 Purpose.

It is the policy of Commodity Credit Corporation (hereafter referred to as "CCC") to apply a late payment charge to the full amount of delinquent debts. This part sets forth the terms and conditions under which such late payment charge will be calculated and assessed.

§ 1403.2 Definitions.

(a) The term "late payment charge" means the amount of interest charged on delinquent debts.

(b) The term "demand for payment" means a written request for payment made by CCC to the debtor when it is determined that any monies which are due and owing by the debtor to CCC are delinquent.

(c) The term "full amount of the delinquent debt" means the sum of the principal, accrued interest, and any other charges which are otherwise due and owing to CCC with respect to the delinquent debt at the time the late payment charge is applied.

(d) The term "delinquent debt(s)" means: (1) A payment that is overdue in accordance with the terms of an arrangement for payment as provided for in the contract, agreement or notification of indebtedness, and (2) any overdue amount owed to CCC by a debtor which is the subject of an arrangement whereby the debtor agrees to pay any such overdue amount in installments.

§ 1403.3 Late payment charge.

(a) A late payment charge is assessed on the full amount of any delinquent debt.

(b) The method for assessing a late payment charge is as follows:

(1) When a debt results from a contract or agreement containing a provision for a late payment charge, a late payment charge will be assessed by CCC on the amount of the delinquent debt from the day the debt became delinquent unless otherwise provided for by such contract or agreement.

(2) When the debt did not result from a contract or agreement containing a provision for a late payment charge, a late payment charge will be assessed by CCC on the amount of any delinquent debt 30 days after CCC issued a demand letter to the debtor notifying the debtor of such delinquency.

(c) The late payment charge will be applied to the delinquent debt for each 30-day period. In addition, the full amount of the late payment charge will also be applicable to periods of less than 30 days.

§ 1403.4 Partial payments.

When a partial payment of a delinquent debt is made to CCC by a debtor, the partial payment will first be applied against the amount of any late payment charge which has been assessed by CCC against the amount of the delinquent debt. Any sum remaining of such partial payment will then be applied against the full amount of the delinquent debt.

§ 1403.5 Amount of late payment charge.

The late payment charge shall be expressed as a rate of interest which CCC charges on a delinquent debt. CCC will publish such rate of interest as a notice in the FEDERAL REGISTER.

§ 1403.6 Applicability.

(a) This part shall only be applicable to (1) any debt incurred after the effective date of this part and which subsequently becomes a delinquent debt; (2) delinquent debts originally incurred before the effective date of this part, the repayment of which is rescheduled by agreement of CCC and the debtor after the effective date of this part; and (3) any other debt or delinquent debt to which the debtor and CCC agree that this part will be applicable.

(b) This part shall not apply to any delinquent debt where the payment of interest on such delinquent debt is otherwise provided for by contract, agreement, regulation, or other means.

[47 FR 37075, Aug. 25, 1982]

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

Sec.
1405.1 Loans to and purchases by trustees.
1405.2 Basic rule of fractions.

§ 1405.1 Loans to and purchases by trustees.

Language in Commodity Credit Corporation price support bulletins or other price support announcements to the effect that the beneficial interest in the commodity must be in the producer tendering the commodity for loan or purchase shall not be interpreted as excluding from any price support program a trustee who is otherwise eligible to participate.

(Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[14 FR 2372, May 7, 1949. Redesignated at 28 FR 579, Jan. 23, 1963]

§ 1405.2 Basic rule of fractions.

The rule of fractions to be used in rounding fractions shall be as provided in §§ 793.1–793.2 of 7 CFR.

(Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[40 FR 58448, Dec. 17, 1975]

PART 1407—SUSPENSION AND DEBARMENT

Sec.
1407.1 Purpose.
1407.2 Suspension and debarment.
1407.3 Scope.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

Source: 50 FR 12767, Apr. 1, 1985, unless otherwise noted.

§ 1407.1 Purpose.

This part prescribes the terms and conditions under which persons (i.e., an individual or any form of business entity, such as a proprietorship, partnership, corporation, association, or cooperative) may be suspended and debarred from contracting with the Commodity Credit Corporation (CCC) and from otherwise participating in programs administered or financed by CCC.

§ 1407.2 Suspension and debarment.

The provisions of 48 CFR 409.403 *et seq.* shall be applicable to all CCC suspension and debarment proceedings, except that the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

§ 1407.3 Scope.

CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers.

PART 1408—SETOFF, WITHHOLDING AND STOP PAYMENT POLICIES OF COMMODITY CREDIT CORPORATION

General

Sec.
1408.1 Purpose.
1408.2 Definitions.
1408.3 Applicability of regulations of the Secretary of Agriculture, Part 13, Title 7, Code of Federal Regulations.

Debts Due CCC

1408.4 Setoff.
1408.5 Withholding.
1408.6 Stop payment.

Setoff Policy Applicable to Other Agencies of the United States

1408.7 Debts due ASCS, AMS, or FNS.
1408.8 Debts due other agencies.
1408.9 Requests for setoff against amounts payable to debtors by CCC.

Miscellaneous

1408.10 Notice to debtor.
1408.11 Conditions under which setoff, withholding, or stop payment actions will not be taken.
1408.12 Order of priority of setoffs.
1408.13 Rights of debtors.
1408.14 Assignments.
1408.15 Interest.
1408.16 Debtors operating under more than one name.
1408.17 Responsibility of agents of or contractors with CCC.
1408.18 Administration.

Authority: Sec. 4(d), 62 Stat. 1071 (15 U.S.C. 714b).

Source: 39 FR 41732, Dec. 2, 1974, unless otherwise noted.

GENERAL

§ 1408.1 Purpose.

This part states the policies of CCC and the conditions under which (a) debts owing to CCC will be set off against amounts payable to debtors by CCC, (b) requests will be made by CCC to other agencies of the United States for setoff against amounts payable by them to such debtors, and (c) debts owing to other agencies of the United States may be set off against amounts payable to debtors by CCC. This part also states the policies and the conditions under which actions will be taken to withhold or stop payments of amounts due debtors by CCC. The provisions of this part shall not apply to the collection of amounts due CCC under a contract by deduction from amounts otherwise payable under the same contract, since the collection of amounts due CCC in such cases is necessary to determine the amount properly payable under the contract.

§ 1408.2 Definitions.

(a) The term "setoff" means the application of a specified amount from amounts payable to a debtor as liquidation, in whole or in part, of an amount owed by the debtor.

(b) The term "withholding" means the taking of action temporarily to prevent the payment of a specified amount from amounts payable to a debtor.

(c) The term "stop payment" means the taking of action temporarily to prevent the payment of all amounts payable to a debtor under one or more contracts.

(d) The term "CCC" means the Commodity Credit Corporation.

(e) The term "ASCS" means the Agricultural Stabilization and Conservation Service of the Department of Agriculture.

(f) The term "AMS" means the Agricultural Marketing Service of the Department of Agriculture.

(g) The term "FNS" means the Food and Nutrition Service of the Department of Agriculture.

(h) The term "other agencies" includes any department, establishment, commission, administration, authority, board, bureau, or service of the United States, or any corporation other than CCC all of the capital stock of which is owned by the United States.

(i) The term "Executive Vice President" means the Executive Vice President of CCC.

§ 1408.3 Applicability of regulations of the Secretary of Agriculture, Part 13, Title 7, Code of Federal Regulations.

The provisions of this part are not applicable to withholding or setoff action taken against amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof. The regulations governing such administrative action are contained in Part 13 of this Title 7, Code of Federal Regulations.

DEBTS DUE CCC

§ 1408.4 Setoff.

(a) If in the case of any procurement contract with CCC which provides for invoicing upon shipment from point(s) of shipment with delivery to be made at designated destination point(s) (1) payment is made to the Contractor prior to receipt of evidence of delivery, and (2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained due to damage or deterioration of the commodity while in transit and prior to delivery, CCC may set off such indebtedness against amounts due and payable to the Contractor under any other contract with CCC if the proceeds thereunder have not been assigned by the Contractor.

(b) In all other cases, debts due CCC shall be set off, in whole or in part, against amounts payable to debtors by CCC, where the following conditions apply:

(1) The debtor has been given a reasonable opportunity to pay.

(2) The debtor has been notified that the debt will be collected by setoff.

(3) There is no legal bar to enforcement of the debt.

(4) The debtor has not disputed the validity or the amount of the debt or, if disputed, there is no reasonable

basis to support the debtor's position or both of the following conditions apply:

(i) Compromise settlement cannot be effected and referral of the debt for legal action is not considered feasible because the amount of the debt is too small to warrant litigation, or there is good reason to believe the debtor may be unable financially to satisfy a judgment by the time the courts would render a decision, and there are no issues involved requiring court adjudication in the interest of program operations.

(ii) The setoff has been approved by an authorized claims official of CCC.

(c) A judgment in favor of CCC, or in favor of the United States on a claim of CCC, shall be set off against amounts payable to a debtor by CCC but, prior to taking such action, the approval of the Department of Justice (U.S. Attorney) shall be obtained.

(d) A debt due under the Civil Frauds Statute, section 231 of Title 31, United States Code, shall be set off against amounts payable to the debtor by CCC, if the Department of Justice has authorized setoff.

(e) Debts due CCC from rail carriers for overcharges or for loss or damage shall be set off against amounts due such carriers under freight bills involving shipments on commercial bills of lading, in the following cases:

(1) Any overcharge debt if:

(i) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity, and

(ii) The period of limitation prescribed in section 16(3)(i), Title 49, United States Code, has not expired.

(2) Any loss or damage debt if:

(i) Demand for payment was made on the carrier within the period of time specified in the bill of lading.

(ii) The carrier has declined payment of the debt without reasonable justification.

(iii) The period of limitations prescribed in the bill of lading has not expired.

(3) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be set off against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(f) If a CCC debt which is subject to collection by setoff under this part cannot be so collected because of insufficient amounts payable to debtor by CCC, CCC shall request another agency of the United States to set off the debt against amounts payable to the debtor in any case where CCC has information that amounts are payable to the debtor by that agency.

[39 FR 41732, Dec. 2, 1974; 39 FR 44194, Dec. 23, 1974]

§ 1408.5 Withholding.

Withholding shall be made from amounts payable to a debtor by CCC, to insure that the interests of CCC and the United States will be protected, in the following cases:

(a) Where there has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC.

(b) Where there is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC.

(c) Where prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld.

(d) Where there is doubt that the debtor will be financially able to pay a judgment on the claim of CCC.

(e) When a judgment on a claim of CCC has been obtained.

(f) Where requested by the Department of Justice.

§ 1408.6 Stop payment.

Stop payment shall be made of all amounts payable to a debtor by CCC in any of the cases described in § 1408.5 where the facts available are insufficient to determine the amount to be withheld or where it is determined that the circumstances with respect to the debtor's acts are sufficiently serious that all payments to the debtor should be stopped immediately in order to protect the interests of the United States.

SETOFF POLICY APPLICABLE TO OTHER AGENCIES OF THE UNITED STATES

§ 1408.7 Debts due ASCS, AMS, or FNS.

Debts due the United States under ASCS, AMS, of FNS programs shall be set off against amounts payable to debtors by CCC in cash. In affecting such setoffs, the provisions set forth in this part with respect to the collection by setoff of debts due CCC shall be followed.

§ 1408.8 Debts due other agencies.

Debts due any other agency shall be set off against amounts payable to debtors by CCC in the following cases:

(a) The agency, the Department of Justice, or the General Accounting Office, submits a request in writing and furnishes information identifying payments to be made by CCC to the debtor: *Provided,* That, if the debt is due a corporate agency and has not been reduced to judgment, such agency must agree to save CCC harmless from liability.

(b) The Internal Revenue Service has filed a notice of lien in accordance with the Internal Revenue Code and has requested setoff, or has served a notice of levy in accordance with section 6331 of the Internal Revenue Code, Title 26 of the United States Code, against money payable to the debtor.

§ 1408.9 Requests for setoff against amounts payable to debtors by CCC.

(a) Indebtedness to CCC, ASCS, AMS, and FNS shall be set off in accordance with instructions issued by ASCS, without a request for setoff having been made to the appropriate ASCS commodity or State office.

(b) Setoffs to recover indebtedness to agencies other than those described in paragraph (a) of this section shall be made only upon filing of a request or notice of levy in accordance with § 1408.8 which shall be mailed or delivered to the appropriate ASCS commodity or State Office, and shall comply with the following:

(1) In addition to the requirements prescribed in § 1408.8, each request for setoff and notice of levy shall be signed by an authorized representative of the creditor agency.

(2) Each request or notice of levy shall state the amount of the indebtedness separately as to principal and interest, and interest (if any) shall be computed to a date shown in the request. If the creditor agency desires that additional interest be computed on the principal, a daily or monthly interest factor per dollar of principal shall be shown in the request. The amount to be set off shall not exceed the principal sum owed by the debtor plus interest computed in accordance with the request.

(3) Each request shall also state the name and address of the debtor and a brief description of the indebtedness, including identification of the court judgment, if any.

(4) If a notice of lien has been filed in accordance with the provisions of the Internal Revenue Code, section 6323 of Title 26, United States Code, the request or notice of levy shall also state the place and date of filing such notice of lien.

MISCELLANEOUS

§ 1408.10 Notice to debtor.

The debtor shall be notified whenever any setoff, withholding or stop payment action has been taken.

§ 1408.11 Conditions under which setoff, witholding, or stop payment actions will not be taken.

Setoff, withholding or stop payment actions will not be taken in the following cases:

(a) Where legal action to enforce the debt due CCC has been barred by a statutory or contract period of limitation, except as provided in § 1408.4(e)(3).

(b) Where collection of a debt has been barred by a discharge in bankruptcy and the debt has not been revived by an action of the debtor.

(c) Where the amount payable to the debtor is to be used to satisfy a prior lien on property pledged or mortgaged to secure a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for withholding or setoff.

(d) Except as provided in § 1408.14, where the amount payable to the debtor is to be used to make payments under an assignment accepted pursuant to contract provisions or program regulations.

(e) When such action will unduly interfere with program operations.

(f) If the debt is in an amount of $3.00 or less.

[39 FR 41732, Dec. 2, 1974; 39 FR 44194, Dec. 23, 1974, as amended by Amdt. 1, 40 FR 29069, July 10, 1975]

§ 1408.12 Order of priority of setoffs.

(a) Debts shall be collected by setoff in the following order of priority:

(1) Debts to CCC.

(2) Debts to ASCS, AMS, and FNS.

(3) Debts to other agencies of the Department of Agriculture.

(4) Debts to the Internal Revenue Service.

(5) Debts to other agencies.

(b) Within each priority grouping in paragraph (a) of this section, the order of setoff shall be the chronological order of the dates the requests for setoff were received.

§ 1408.13 Rights of debtors.

Setoffs made pursuant to this part shall not deprive a debtor of any right he might otherwise have to contest the justness of the debt involved in the setoff action either by administrative appeal or by legal action except where the setoff is agreed to by the debtor.

§ 1408.14 Assignments.

(a) Notwithstanding any assignment of amounts payable under a CCC contract, CCC may set off against such amounts to collect:

(1) Any amounts due CCC under the provisions of the contract.

(2) Any amounts for which a contractor is indebted to the United States for taxes, with respect to which a notice of lien was filed or a Notice of Levy was served in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323; 6331) or any amendments or modifications thereof, prior to acknowledgment by CCC of receipt of the notice of assignment.

(3) Any amounts, other than amounts specified in paragraphs (a)(1) and (2) of this section, due CCC or any other agency of the United States, if CCC notified the assignee of such amounts to be set off at the time acknowledgment was made of receipt of notice of such assignment.

(b) Any indebtedness of a contractor to any agency of the United States which may not be set off pursuant to paragraph (a) of this section, may be set off against any amount due and payable under the contract which remains after deduction of amounts (including interest and other charges) owing by the contractor to the assignee for which the assignment was made.

(c) Notwithstanding any assignment of amounts payable under a CCC contract, CCC may withhold or stop payment of any such amounts in any instance where such action is deemed necessary to protect the interests of the United States as provided in §§ 1408.5 and 1408.6, pending a determination of possible setoff action under this part.

§ 1408.15 Interest.

Interest shall not be paid on delayed payments unless required by contract or in special circumstances as may be determined by the Executive Vice President, or his designee.

§ 1408.16 Debtors operating under more than one name.

Any action authorized by the provisions of this part may be taken against amounts payable to a debtor who operates businesses under more than one name, provided there is identical ownership.

§ 1408.17 Responsibility of agents of or contractors with CCC.

Agents of or contractors with CCC shall carry out the policies stated in this part, if the contract entered into with CCC provides that they shall do so. In carrying out these policies such agents or contractors shall follow the requirements and conditions set forth in this part.

§ 1408.18 Administration.

The policies set forth in this part shall be carried out through the appropriate divisions and offices of ASCS.

PART 1409—MEETINGS OF THE BOARD OF DIRECTORS OF COMMODITY CREDIT CORPORATION

Sec.
1409.1 General statement.
1409.2 Definitions.
1409.3 Open meetings.
1409.4 Exemptions.
1409.5 Closure of meetings.
1409.6 Notices to the public.
1409.7 Records retention.
1409.8 Public inspection and copying of records; applicable fees.
1409.9 Report to Congress.

AUTHORITY: Sec. 3(a), 90 Stat. 1244 (5 U.S.C. 552b), and sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

SOURCE: 42 FR 14673, Mar. 16, 1977, unless otherwise noted.

§ 1409.1 General statement.

(a) It is the policy of Commodity Credit Corporation, under the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) to make available to the public, to the fullest extent practicable, information regarding the decision process of the Board of Directors of Commodity Credit Corporation.

(b) This part sets forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of Commodity Credit Corporation in carrying out its responsibilities under the statutes administered by Commodity Credit Corporation.

§ 1409.2 Definitions.

(a) The term "Board" means the Board of Directors of Commodity Credit Corporation.

(b) The term "Director" means an individual who is a member of the Board of Directors of Commodity Credit Corporation and includes the Secretary of Agriculture, who is by statute an ex-officio director and Chairman of the Board.

(c) The term "General Counsel" means the General Counsel or the Assistant General Counsel of Commodity Credit Corporation.

(d) The term "meeting" means the deliberations of at least five (quorum) Directors of the Board of Directors of Commodity Credit Corporation where such deliberations determine or result in the joint conduct or disposition of official Board business but shall not include deliberations for: (1) Closing a portion or portions of a meeting or series of meetings as provided in § 1409.5 (a) and (b) of this part, or (2) calling a meeting at a date earlier than announced as provided in paragraph 1409.6(a)(2) of this part; or (3) changing the subject matter of a publicly announced meeting as provided in § 1409.6(b) of this part; or (4) determining whether or not to withhold from disclosure information pertaining to a meeting or portions of a meeting or series of meetings as provided in § 1409.5(b) of this part.

(e) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by Commodity Credit Corporation.

§ 1409.3 Open meetings.

Every portion of every meeting of the Board of Directors will be open to public observation except as provided in §§ 1409.4 and 1409.5 of this part.

§ 1409.4 Exemptions.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1409.3 of this part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meeting is likely to—

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to: (i) Lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution; or (ii) significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern Commodity Credit Corporation's participation in a civil action or proceedings.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) *Procedure for closing a majority of the meetings.* (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of § 1409.4(a) of this part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in § 1409.4(a) of this part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and § 1409.6, except § 1409.6(e), of this part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) *Procedure for closing other meetings.* (1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in § 1409.4(a) of this part. The vote of each Director will be recorded and no proxy shall be allowed.

(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in § 1409.4(a) of this part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public or with respect to the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in § 1409.4(a) of this part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of § 1409.4(a) of this part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) *General counsel's certification.* Before every Board meeting closed on the basis of one or more of the exemptions in § 1409.4(a) of this part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§ 1409.6 Notices to the public.

(a) (1) The Secretary of the Board will make public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) subject matter of the meeting, except to the extent that such information is exempt from disclosure under § 1409.4(a) of this part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors determine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b) (1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with § 1409.5(b) of this part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with § 1409.5(b) of this part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full written explanation of the Board's action in closing the portion of portions of the meeting or series of meetings, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(c) The time or place of a board meeting may be changed following the public announcement as required by paragraph (a)(1) of this section only if the Board publicly announces such change or changes at the earliest practicable time.

(d) The subject matter of a Board meeting or the determination of the Board to open or close a meeting or portions thereof to the public, may be changed following the public announcement as required by paragraph (a)(1) of this section only if (i) five Directors determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible and (ii) the Board publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The Secretary of the Board shall use all reasonable means to keep the public promptly and fully informed of public announcements including the use of a bulletin board outside the office of the Secretary of the Board at the address indicated in § 1409.8(b) of this part. Requests for information concerning Board meetings should be addressed to the Secretary of the Board.

(f) Immediately following each public announcement required by this section, the information provided in such public announcement will be submitted for publication in the FEDERAL REGISTER.

(g) The Board usually meets in room 200-A, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, D.C. Each person interested in attending an open meeting of the Board should notify the Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§ 1409.7 Records retention.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under § 1409.5 of this part:

(1) A copy of the General Counsel's certification required by § 1409.5(c) of this part;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemptions (8), (9)(i) or (10) of § 1409.4(a) of this part, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1409.8 Public inspection and copying of records; applicable fees.

(a) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, or any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the Secretary of the Board determines to contain information which may be withheld on the basis of one or more of the exemptions in § 1409.4(a) of this part.

(b) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Secretary of the Board of Directors of Commodity Credit Corporation, Room 218-W, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250.

(c) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

§ 1409.9 Report to Congress.

The Secretary of Agriculture will annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the Sunshine Act, including any costs assessed against Commodity Credit Corporation in such litigation.

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

EDITORIAL NOTE: For FEDERAL REGISTER citations to regulations for previous program years not included in this volume, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

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AUTHORITY: Secs. 4 and 5; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c); secs. 101, 105B, 107B, 110, 201, 301, 401, 405; 63 Stat. 1051, as amended, 95 Stat. 1242, as amended, 1227, as amended, 1221, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b-1, 1445e, 1446, 1447, 1421, 1425).

Subpart—General Regulations Governing Price Support for the 1985 and Subsequent Crops

SOURCE: 44 FR 2354, Jan. 11, 1979, unless otherwise noted.

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1985 crop and each subsequent crop of barley, corn, flaxseed, oats, rice, rye, sorghums, soybeans, farm-stored peanuts, farm-stored flue-cured tobacco, and wheat. Price support shall be made available for a particular crop of a commodity based upon the level of support which is determined and announced annually by the Secretary. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing an eligible commodity stored in approved warehouse storage. A producer may sell to CCC any or all of an eligible commodity which is not security for a price support loan by delivering to CCC the commodity or the warehouse receipts representing the commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

[Amdt. 3, 49 FR 46706, Nov. 28, 1984, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.2 Administration.

(a) *Responsibility.* The Price Support and Loan Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees (hereinafter called State and county committees) the Kansas City Commodity Office, and the ASCS Management Field Office.

(b) *Documents.* Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called county office) designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approve documents under this program except where otherwise specified in the regulations in this subpart. They may also execute releases or otherwise obtain the release of record of financing statements and chattel mortgages filed by CCC to protect security in agricultural loan commodities upon payment in full of the loan involved. They may execute indemnity agreements on behalf of CCC where any county recording officer deems such indemnity agreement necessary to releasing a mortgage or security agreement of record.

(c) *Limitation of authority.* County executive directors, State and county committees, the Kansas City Commodity Office, and the ASCS Management Field Office do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(d) *State committee.* The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also: (1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the applicable regulations in this subpart.

(e) *Executive Vice President, CCC.* No delegation herein to a State or county committee, the Kansas City Commodity Office, or the ASCS Management Field Office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee, the Kansas City Commodity Office, or the ASCS Management Field Office.

§ 1421.3 Eligible producers.

(a) *Producer.* An eligible producer of a crop of a commodity shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity: (1) Which produces such crop as landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop and (2) which meets the requirements for eligibility for price support contained in the regulations in this subpart. A producer member of a cooperative must furnish the cooperative a CCC-822, Certificate of Eligibility, before the cooperative can pledge the producer's commodity for loan.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or purchase documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements: (1) The right of majority has been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian; (3) any note signed by the minor is cosigned by a financially responsible person; or (4) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.* Two or more eligible producers may obtain a joint loan on an eligible commodity produced by them if stored in the same farm storage facility except that in lieu of obtaining a joint loan, a producer may obtain an individual loan on his or her separate share of the commodity if other producers who stored a portion of the commodity in the facility execute a Form CCC-665 stating, in part, that they are aware that a portion of the commodity in the storage facility will be under loan and that they will obtain permission from the county office, prior to removing any commodity from the facility. Two or more eligible producers may obtain a warehouse storage joint loan on an eligible commodity produced by them, provided the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan will be jointly and severally liable for the breach of the obligations set forth in the loan documents and in the regulations applicable to the price support program for the commodity on which the loan was made.

(e) *Approval by county committee.* If a producer has been convicted of a criminal act, or has made a misrepresentation, in connection with any price support program, or has unlawfully disposed of any loan collateral, or if a county committee has had difficulty in settling a loan with the producer because of failure to protect properly the mortgaged commodity, or for other reasonable grounds, the producer may be denied price support until the county committee is satisfied that both the producer and the commodity offered for price support meet the eligibility requirements of the program, and that CCC will be fully protected against any possible loss other than a loss assumed by CCC under the regulations in this subpart.

(f) *Warehouse storage loans to warehousemen.* Warehouse storage loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC or the Executive Vice President's designee, pursuant to Part 1425 of this chapter, to obtain price support on a crop of barley, corn, oats, rice, rye, sorghum, soybeans, and wheat may obtain price support on the eligible warehouse stored production of such crop of the commodity on behalf of its members. When used in this subpart and on applicable forms, the term "producer" means both an eligible producer as defined by paragraphs (a), (b), and (c) of this section and an approved cooperative association.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979]

§ 1421.4 Eligibility requirements.

(a) *Requesting price support.* To obtain price support on an eligible commodity a producer must request a loan on, or notify the county office of an intention to sell the eligible commodity by delivering to the county office a completed Purchase Agreement (Form CCC-614), no later than the date(s) specified in the applicable commodity supplement(s).

(b) *Area of availability.* Price support shall be available to eligible producers on barley, corn, flaxseed, oats, rye, sorghum, soybeans, and wheat produced in any area of the United States. Price support shall be available on rice produced only in the continental United States and price support on farm stored peanuts, and farm-stored flue-cured tobacco shall be available only in the States specified in the regulations applicable to such commodities. Commodities must not have been produced on land owned by the Federal Government if such land is occupied without lease, permit or other right of possession.

(c) *Beneficial interest.* To be eligible for price support, the beneficial interest in the commodity must be in the producer tendering the commodity as security for a loan or for purchase and must always have been in the producer or in such producer and a former producer whom he/she succeeded before it was harvested, except that heirs who: (1) Succeed to the beneficial interest of a deceased producer, (2) assume the decedent's obligation under a loan if a loan has already been obtained, and (3) assure continued safe storage of the commodity if under farm storage loan, shall be eligible for price support as producers whether such succession occurs before or after harvest of the commodity. A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if under the contract or option, the producer retains control, risk of loss and title to the commodity subject to such agreements and retains control of its production. Commodities obtained by purchase shall not be eligible for price support. If price support is made available through an approved cooperative marketing association, the beneficial interest in the commodity must always have been in the producer-members who delivered the commodity to the approved cooperative or its member cooperatives or must always have been in them and former producers whom they succeeded before the commodity was harvested, except as provided in the case of heirs of a deceased producer. Commodities so delivered to a cooperative marketing association shall not be eligible for price support if the producer-members who delivered the commodity to the cooperative or its member cooperatives do not retain the right to share in the proceeds from the marketing of the commodity as provided in Part 1425 of this chapter.

(d) *Succession of interest.* To meet the requirements of succession to the beneficial interest of a former or deceased producer under paragraph (c) of this section, the rights, responsibilities, and interest of the former producer with respect to the farming unit on which the commodity was produced shall have been substantially assumed by the person claiming succession. Mere purchase or inheritance of a crop prior to harvest without acquisition of any additional interest in the farming unit on which the crop is produced does not constitute succession to such beneficial interest.

(e) *Doubtful cases.* Any producer in doubt as to whether the beneficial interest in the commodity complies with the requirements of this section, before requesting price support, shall make available to the county committee all pertinent information which will permit a determination to be made by CCC.

(f) *Redeemed loan collateral.* A producer may, before the final date for obtaining a loan on a commodity, reoffer as security or repledge as collateral for a new loan any commodity that has been previously so mortgaged or pledged. Such loan shall have the same maturity date as the original loan.

[44 FR 2354, Jan. 11, 1979, as amended at 45 FR 31699, May 14, 1980]

§ 1421.5 Miscellaneous requirements.

(a) *Revenue stamps.* Farm Storage Note and Security Agreements and Warehouse Storage Note and Security Agreements must have State and documentary revenue stamps affixed thereto where required by law.

(b) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising any commodity eligible for price support under a program to which this subpart is applicable, authority to exercise on behalf of the producer any of the producer's rights or privileges under such program or any note and security agreement or other instrument executed in obtaining price support under such program, unless the person (or the person's representative) to whom authority is delegated is serving in the capacity of a farm manager for the producer. Any delegation of authority given in violation of this paragraph shall be without force and effect and shall not be recognized by CCC.

§ 1421.6 Program availability, disbursement, and maturity of loans.

(a) *Where to request price support.* A producer should request price support at the local county ASCS office. An approved cooperative marketing association must request price support at a servicing bank approved by CCC or at the county ASCS office for the county in which the principal office of the cooperative is located unless the State ASC committee designates some other county ASCS office.

(b) *Disbursement of loans.* Disbursement of loans will be made by county ASCS offices by drafts drawn on CCC or by credit to the producer's account, except that loans may be disbursed by approved servicing banks to approved cooperative marketing associations. The loan documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledge is in existence and in good condition.

If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Availability and maturity dates.* Final availability dates applicable to loans and purchases will be specified in the individual commodity regulations which supplement this subpart. Whenever the final date of availability or the maturity date falls on a nonworking day for county offices, the applicable final date shall be extended to include the next workday. Loans on commodities other than rice, farm-stored flue-cured tobacco and farm-stored peanuts mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. If the loan is not disbursed by the last day of the calendar month following the month in which loan application is made, the producer must reapply for a commodity loan as otherwise provided by this part.

(d) *Loan repayment acceleration.* CCC may, at any time, accelerate the time for repayment of a price support loan indebtedness. In the event of any such acceleration, CCC will give the producer notice of such acceleration at least 10 days in advance of the accelerated loan maturity date.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.7 Approved storage.

Loans will be made only on commodities in approved storage as defined below:

(a) *Farm storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by a representative of the county committee to afford safe storage of the commodity.

(b) *Warehouse storage.* Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such warehouse is referred to in the regulations in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State and county offices.

§ 1421.8 Applicable forms.

The forms for use in connection with this program shall be as follows: Form CCC-614, Purchase Agreement; Form CCC-665, Agreement on Grain Mortgaged to CCC; Form CCC-677, Farm Storage Note and Security Agreement; Form CCC-678, Warehouse Storage Note and Security Agreement; Form CCC-679, Lien Waiver; Form CCC-681, Authorization for Removal of Farm Storage Collateral; Form CCC-681-1, Marketing Authorization for Loan Collateral; Form CCC-685, Authorization to Release Warehouse Receipts; Form CCC-687-1, Approval to Commingle or Move Loan Collateral; Form CCC-691, Commodity Delivery Notice; Form CCC-692, Settlement Statement; Form CCC-822, Certificate of Eligibility; Form CCC-864, Lienholder's Subordination Agreement; and such other forms as may be prescribed by CCC. These forms may be obtained in State and county offices.

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC, under this program, must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart and in the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.18(c).

(c) *Where warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) *Insurance.* Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984]

§ 1421.10 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. Notwithstanding, the foregoing provisions, in lieu of waiving a prior lien on a commmodity tendered as security for a loan, a lienholder may execute a Lienholders Subordination Agreement (Form CCC-864) with CCC to which the lienholder subordinates the security interest to the rights of CCC in the commodity subject to the loan or such other quantity of the commodity as is delivered in satisfaction of a loan under applicable program provisions. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.11 Fees and charges.

(a) *Loan service fee.* A producer shall pay a loan service fee of $10 for each farm storage loan disbursed, plus $1 for each bin over one, and $6 for each warehouse storage loan disbursed, plus $1 for each warehouse receipt over one. The loan service fee is not refundable.

(b) *Delivery charge.* A delivery charge, in addition to the loan service fee, shall be paid by producers on the quantity of the commodity delivered to CCC. The rate is one-half cent per bushel for commodities handled on a bushel basis and 1 cent per hundredweight for commodities handled on a hundredweight basis. In the case of farm storage loans, identity preserved and modified commingled warehouse storage loans and purchases, such delivery charge shall be paid at time of settlement. In the case of commingled warehouse storage loans, such delivery charge shall be deducted from loan proceeds and will be credited to the producer's account on any quantity redeemed.

§ 1421.12 Interest rate.

(a) Except as provided in paragraph (b), price support loans shall bear interest at the rate announced in a separate notice in the FEDERAL REGISTER.

(b) Price support loans which have been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for called loans, whichever is applicable.

[46 FR 11804, Feb. 11, 1981, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984]

§ 1421.13 Insurance on farm storage loans.

CCC does not require the producer to insure the commodity placed under a farm storage loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the commodity involved in the loss.

§ 1421.14 Setoffs.

(a) *Facility and drying equipment loans.* If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in the Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right the producer would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm storage loan or identity preserved warehouse storage loan, or for any loss in quality of the commodity placed under a modified commingled warehouse storage loan. Notwithstanding the foregoing, any such loss occurring and reported to the county office after disbursement of the loan funds and prior to redemption or delivery to CCC will be assumed by CCC to the extent of the settlement value at the time of destruction of the quality of the commodity destroyed up to a quantity not in excess of that required to secure the outstanding loan (or if the commodity is not destroyed in an amount equivalent to the extent of the loss or damage as determined by CCC), less any insurance proceeds to which CCC may be entitled and the salvage value of the commodity, if the producer establishes to the satisfaction of CCC each of the following conditions:

(a) The physical loss or damage occurred without fault or negligence on the part of the producer or any other person having control of the storage structure;

(b) The physical loss or damage resulted solely from an external cause (other than insect infestation, rodents, or vermin) such as theft by a person not entrusted with possession of the commodity and occurring without the knowledge or consent (express or implied) of the producer, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God;

(c) The producer has given the county office immediate notice of such loss or damage prior to redemption or delivery to CCC; and

(d) The producer has made no fraudulent representation in the loan documents or in obtaining the loan. No physical loss or damage occurring prior to the date of disbursement of the loan funds to the producer will be assumed by CCC.

§ 1421.16 Personal liability of the producers.

(a) *Fraud relating to farm storage and warehouse storage loans and unlawful dispositions.* The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the commodity by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable upon demand and the producer shall be personally liable, aside from any additional liability under criminal and civil fraud statutes, for the amount of the loan, for any additional amount paid to the producer in connection with the commodity and for all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on such amounts. Notwithstanding the provisions of section 6(b) of the Farm Storage Note and Security Agreement (Form CCC-677) and section 6(b) of the Warehouse Storage Note and Security Agreement (Form CCC-678), if a producer has made any such fraudulent representation or unlawful disposition, the amount with which the producer will be credited for any commodity delivered to or removed by CCC will be, whichever is applicable, (1) the market value as determined by CCC as of the date of delivery to or removal by CCC or the loan settlement value, whichever is the lower, in the case of farm storage loans, (2) the market value of the commodity at the close of the market on the final date for repayment or the loan settlement value, whichever is the lower, in the case of warehouse storage loans, or (3) the sales price, less any costs sustained by CCC, if the commodity is sold by CCC in order to determine its market value, or the loan settlement value, whichever is the lower. If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the commodity, or part thereof delivered to CCC or removed by CCC, shall be the same as the settlement value for an eligible commodity acquired by CCC as provided in the applicable commodity supplement.

(b) *Fraud relating to purchases.* If the producer has made a fraudulent representation in a price support purchase by CCC or in the purchase documents, the producer shall be personally liable, aside from any additional liability under criminal or civil fraud statutes, for any loss which CCC sustains upon the commodity delivered under the purchase agreement. For the purpose of this program, such loss shall be deemed to be the price paid to the producer on the commodity delivered under the purchase agreement plus all costs sustained by CCC in connection with the commodity together with interest on such amounts, less the lowest of the following: The market value, as determined by CCC, of the commodity as of the close of the market on the date of delivery; the sales price if the commodity is sold in order to determine its market value; or CCC's purchase price.

(c) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from delivering to CCC a commodity containing mercurial compounds or other substances poisonous to humans or animals or food commodities which are contaminated.

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase, or in settlement thereof, exceeds the amount authorized under these regulations and the applicable commodity supplement to this subpart, the producer shall be personally liable for repayment of the amount of such excess.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required according to this part, the producer shall be personally liable for repayment of the amount of such deficiency.

(f) *Joint loans.* In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note.

§ 1421.17 Farm storage loans.

(a)(1) *Quantity for loans.* The quantity of a commodity which shall be used to determine the amount of a farm storage loan shall not exceed a percentage (hereinafter called the "loan percentage"), as established by the State committee, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm storage loans may be made on less than the maximum quantity eligible for loan at the producer's request. However, all of the commodity in a bin, crib, or lot shall be pledged as security for a farm storage loan although only a portion thereof would otherwise be adequate security for the amount of the loan.

(2) The State committee shall establish the loan percentage each year for each commodity on a Statewide basis or for specified areas within the State. With respect to ear corn the loan percentage may not exceed 90 percent. The factors to be considered by the State committee in determining loan percentages shall include but not be limited to: (i) General crop conditions; (ii) factors affecting quality peculiar to an area or State; and (iii) climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to: (i) The condition or suitability of the storage structure; (ii) the condition of the commodity; and (iii) the hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(b) *Commingling eligible and ineligible commodity.* If an eligible quanity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC-687-1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

(c) *Transfer from farm storage loans to warehouse storage loans.* Upon request by the producer, the county committee may approve the transfer of a commodity or part thereof which is under a farm storage loan to a warehouse storage loan at any time during the loan period. In the case of emergency transfers, the producer must make the request in writing describing the emergency. Liquidation of the farm storage loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse storage loan and the immediate payment by the producer of the amount by which the warehouse storage loan is less than the farm storage loan or part thereof plus interest. Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse storage loan shall be the maturity date applicable to the farm storage loan which was transferred.

(d) *Transfer from warehouse storage loan to farm storage loan.* Upon request by the producer, the county committee may authorize the transfer of a warehouse storage loan or part thereof to a farm storage loan. The producer must immediately repay the amount by which the farm storage loan is less than the warehouse storage loan plus interest on the shortage. Such farm storage loans shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the warehouse storage loan which was transferred.

(e) *Producer certification.* The quantity of a commodity pledged as security for a farm storage loan may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC-666 is eligible to be pledged as collateral and is otherwise available for loan purposes. The maximum loan percentage with respect to barley, corn, and sorghum when they are considered to be high moisture commodities shall be 75 percent of the quantity certified by the producer, unless such loan percentage is reduced by the State or county committee in accordance with paragraph (a) of this section.

(f) *Producer incorrect certification.* (1) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan. The producer shall have ten days to settle the loan; However, the producer may request reconsideration of the call and provide information regarding the circumstances leading to the incorrect certification. The county committee may approve the producer's request if: (i) The circumstances are of a highly meritorious nature, (ii) the producer acted in good faith, (iii) the producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity, (iv) the producer repays the overdisbursement. If the loan is called, the county committee may refuse to approve any further farm stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made and, if the county committee feels the seriousness of the matter justifies such action, refer the case to the State committee which may request the Office of Inspector General of the United States Department of Agriculture (hereinafter referred to as OIG) to make an investigation.

(2) If the producer has incorrectly certified such quantities on more than one occasion, the county committee shall call the loan or loans involved and approve no further farm stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or unauthorized disposition of any part of farm-stored collateral, the county committee may: (1) Call the loan involved, (2) refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and (3) take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of liquidated damages.* If liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984; 50 FR 42511, Oct. 21, 1985]

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC the principal amount of the loan which is outstanding with respect to the quantity of the commodity released, plus interest. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and the commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (1) The expiration date of such marketing authorization, or (2) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

(b) *Release of farm storage note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by repayment of the principal amount of the loan, plus interest, with respect to the quantity of the commodity to be released. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421,5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC-699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC-699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC-699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. A producer may redeem all or part of the commodity reconcentrated by paying to CCC the loan principal plus applicable interest and charges before the new warehouse receipt is delivered to CCC. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Pro-

gram, the producer shall pay early redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage shall be the maturity date applicable to the original warehouse storage loan.

(d) *Release of warehouse storage note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

[44 FR 2354, Jan. 11, 1979, as amended by Amdt. 3, 49 FR 46707, Nov. 28, 1984]

§ 1421.19 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to repay the loan or deliver to CCC a sufficient quantity of the eligible commodity having a price support value equal to or greater than the outstanding balance of the loan. Deliveries may be either of the identical commodity which is subject to the note and security agreement or of other eligible commodities of the same kind. Deliveries shall be made in accordance with written instructions issued by the county ASCS office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity in excess of the larger of: (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of the commodity having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity delivered shall be made as provided in § 1421.22. If the producer fails to deliver to CCC the commodity pledged as price support loan collateral by the date specified by CCC on Form CCC-691, Commodity Delivery Notice, and if the producer subsequently redeems the collateral by repaying the loan before delivery is accomplished, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity redeemed. Such liquidated damages shall be assessed beginning on the date following the required delivery date and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the repaid quantity by 50 percent of the rate of interest charged by CCC with respect to delinquent debts on the date the failure to deliver occurred.

(b) *Notice to county office.* If the producer desires to deliver the commodity to CCC, the producer should, on or before maturity, give the county office notice, in writing, of such intention.

(c) *Commodity going out of condition.* If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made subject to the provisions of § 1421.15 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee. Settlement will be made with the producer as provided in § 1421.22.

[44 FR 2354, Jan. 11, 1979, as amended by Amdt. 3, 49 FR 46708, Nov. 28, 1984]

§ 1421.20 Liquidation of warehouse storage loans.

If a producer does not repay the loan indebtedness upon maturity of the loan, CCC shall have the right to sell or acquire title to the commodity pledged as security for the loan indebtedness.

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not mortgaged to CCC under a farm storage loan or pledged to CCC under a warehouse storage loan: *Provided,* That the producer executes and delivers to the county office no later than the date specified in the applicable commodity supplement, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of the commodity the producer will sell to CCC. CCC will not accept delivery of any quantity in excess of 110 percent of the quantity shown on the purchase agreement. Settlement of the quantity not to exceed 110 percent of the quantity shown on the purchase agreement shall be made as provided in § 1421.22.

(b) *Delivery period.* (1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.

(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 10 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this § 1421.21, in the case of an eligible farm stored commodity covered by an approved Purchase Agreement (Form CCC-614) the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979]

§ 1421.22 Settlement.

(a) *General.* Settlement with producers for commodities acquired by CCC as a result of loans made or under purchase agreements entered into under this subpart shall be made as provided in this section and in the applicable commodity regulation. The price support rate at which settlement shall be made shall be determined in accordance with the provisions of the applicable commodity regulations. Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer. In the case of farm-stored peanuts and farm-stored tobacco, paragraphs (b), (c), and (e) of this section shall not apply. In the case of farm-stored rice, paragraphs (b) and (c) of this section shall not apply.

(b) *Warehouse storage.* Settlement for eligible commodities stored in an approved warehouse and acquired by CCC shall be made on the basis of the weight, grade, and other quality factors shown on the warehouse receipts or accompanying documents, as applicable, issued by such warehouse.

(c) *Other than approved warehouse storage.* (1) Settlement for corn, oats, and soybeans delivered from other than approved warehouse storage shall be based on: (i) The applicable support rate for the county in which the producer's customary delivery point (as determined by the county office) is located, and (ii) on the quality and quantity delivered as shown on the warehouse receipts and accompanying documents issued by an approved warehouse to which delivery is made, or if applicable the quality and quantity delivered as shown on a form prescribed by CCC for this purpose.

(2) Settlement for barley, sorghums, rye, flaxseed, and wheat delivered from other than approved warehouse storage shall be based on the applicable support rate for the county in which the producer's customary ship-

ping point (as determined by the county committee) is located, except that if the producer is directed to ship the commodity by rail to a warehouse for storage which is in line of transit to a normal marketing center, settlement shall be based on the support rate established for the county from which the commodity was shipped plus the amount of freight charges per bushel actually paid in and the truck receiving and rail load out charges charged by the shipping warehouse. Settlement shall be based on the quality and quantity delivered as indicated on warehouse receipts and accompanying documents issued by an approved warehouse to which delivery is made, or, if applicable, the quantity and quality delivered as shown on a form prescribed by CCC.

(d) *Ineligible commodity inadvertently accepted by CCC.* If an ineligible commodity or a quantity in excess of the maximum estabished in § 1421.19 or 1421.21 is inadvertently accepted by CCC, the settlement value of such commodity shall be the market value as of the date of delivery as determined by CCC, but in no event more than the applicable loan value. If CCC sells the commodity for the purpose of determining its market value, the settlement value shall be the lower of the sales price or the loan value after applying applicable premiums and discounts. If a commodity is delivered to CCC which contains mercurial compounds or other substances poisonous to humans or animals, any sale by CCC shall be for seed (in accordance with applicable State seed laws and regulations), fuel, or industrial uses where the end product will not be consumed by humans or animals. The provisions of § 1421.16 shall be applicable to settlement on ineligible commodities where there has been a fraudulent representation on the part of the producer.

(e) *Compensation for hauling.* When a producer is directed by the county office to haul the commodity a greater distance than would have been necessary to make delivery to the producer's customary delivery point, the producer will be allowed compensation (as determined by the State committee at not to exceed the common carrier truck rate or the rate available from local truckers) for hauling the eligible commodity the additional distance. In determining the rate of payment for excess hauling, the State committee may establish reasonable mileage minimums below which producers will not receive compensation for hauling.

(f) *Trackloading*—(1) *Delivery.* Producers may request trackloading where approved warehouse space is not available locally or where the county office determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers prior to delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, irrespective of the grade or quality of a commodity loaded into the car by any producer.

(2) *Payments.* A trackloading payment of 10 cents per bushel (or 16.67 cents per hundredweight in the case of sorghum and rice) shall be made to the producer on an eligible commodity delivered to CCC on track at a country point.

(g) *Storage deduction for early delivery.* If a farm stored commodity is delivered in advance of the applicable loan maturity date as provided in §§ 1421.19 and 1421.21, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date or expiration date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) *Warehouse storage loans called prior to maturity and not redeemed.* A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the rate prepaid by the producer for the period of unearned storage.

(i) *Refund of prepaid handling charges.* If a warehouse charges the producer for the receiving or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the rate prepaid by the producer. The producer must furnish to the county office, written evidence signed by the warehouse operator that such charges have been paid.

(j) *Payment of amount due producer.* If the settlement value of the commodity delivered exceeds the amount due on the loan (excluding interest), such excess amount shall be paid to the producer.

(k) *Payment of deficiency by producer.* If the settlement value of the commodity is less than the amount due on the loan (excluding interest), the amount of the deficiency plus interest thereon shall be paid to CCC, except as provided in § 1421.15, and may set off against any payment which would otherwise be due the producer under any agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

(l) *Storage payment where CCC is unable to take delivery.* A producer may be required to retain a commodity stored in other than an approved warehouse under loan or for sale to CCC for a period of 60 days after the maturity date without any cost to CCC. If CCC is unable to take delivery of the commodity within the 60-day period after maturity, the producer shall be paid a storage payment upon delivery of the commodity to CCC: *Provided,* That, in the case of sales to CCC, a storage payment shall be paid a producer whose commodity is stored in other than an approved warehouse only if the producer had properly given notice that the commodity would be sold to CCC. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after the maturity date and extend through the final date of delivery, or the final date for delivery as specified in the delivery instructions issued to the producer by the county office, whichever is earlier. The storage payment for grains shall be computed at the rate furnished by the storing warehouse. The storage payment for rice shall be computed at the rate furnished by the storing warehouse for commodities stored on an identity-preserved basis.

[44 FR 2354, Jan. 11, 1979; 44 FR 6351, Feb. 1, 1979, as amended by Amdt. 3, 49 FR 46708, Nov. 28, 1984]

§ 1421.23 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the amount of the note, interest, and charges) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may similarly be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity.

(b) *When CCC takes title to commodity.* Upon maturity and nonpayment of the producer's note, title to the unredeemed collateral securing the note shall, at CCC's election, immediately vest in CCC without a sale thereof. When CCC acquires title to the unredeemed collateral. CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, i.e., the unpaid amount of the note plus interest and charges.

(c) *Payments to producer.* Nothing herein shall preclude the making of the following payments to the producer, or to the producer's personal representative only, without right of assignment to or substitution of any other party: (1) Any amount by which the settlement value of the mortgaged or pledged commodity exceeds the loan indebtedness, or (2) the amount by which the proceeds of sale exceed the loan indebtedness if the loan collateral is sold to third persons rather than CCC acquiring title to such loan collateral.

(d) *Commodity sold at less than amount due on loan.* If a farm stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer under any other agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

§ 1421.24 Weed control laws.

Where the State committee determines that State, district, or county weed control laws, as administered, affect the commodity, the price support rate shall be reduced by the discount as shown in the applicable commodity supplement. The discount will not apply; *However,* If the producer furnishes a certification from the appropriate weed control official that the commodity complies with the weed control laws or the storing warehouseman in the case of approved storage furnishes a certification that the commodity complies with the weed control laws and that the warehouseman will hold CCC harmless from loss or penalty. The certification of the warehouseman shall be in substantially the following form:

CERTIFICATION

This is to certify that the commodity evidenced by warehouse receipt No. —— issued to ——— is not subject to seizure or other action under weed control laws or regulations in effect a point of storage. It is further certified and agreed that if such commodity be taken over by CCC in settlement of a loan or be purchased by CCC, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt.

(Signature) ————————————

§ 1421.25 Handling payments and collections not exceeding $ 9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $ 9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $ 9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[44 FR 2354, Jan. 11, 1979, as amended at 49 FR 50168, Dec. 27, 1984]

§ 1421.26 Definitions.

As used in the regulations in this subpart, and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires.

(a) *General.* The following words or phrases: "Person", "State committee,", "State Executive Director", "county committee", "county executive director", and "farm", respectively, shall each have the same meaning as the definitions of such term in the Regulations Governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this title and any amendments thereto.

(b) *Settlement value.* The term "settlement value" means the value at which settlement is made with the producer on the mortgaged or pledged commodity or the commodity offered for purchase, as determined under the provisions of the regulations in this part.

(c) *Charges.* The term "charges" means all fees, costs, and expenses incident to insuring, carrying, handling, storing, conditioning, and marketing the commodity and otherwise protecting the interest in the loan collateral of CCC or the producer, including foreclosure costs.

(d) *Basic price support rate.* The term "basic price support rate" means the support rate for a commodity for an applicable area or county before adjustment for premiums and discounts.

(e) *County committee.* The term "county committee" means only the committee and not its representative.

(f) *Representative of the county committee and county committee representative.* The terms "representative of the county committee" and "county committee representative" means a member of the county committee, the county executive director or a person designated by the county executive director to act in behalf of the county executive director.

(g) *The regulations in this subpart.* The term "the regulations in this subpart" means the regulations in Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops, and in the applicable commodity supplements together with any amendments thereto.

(h) *Request for price support.* The term "request for price support" means a request for loan or execution of Purchase Agreement (Form CCC-614) as applicable.

§ 1421.27 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or a purchase, payment shall, upon proper application to the county office which made the loan or purchase, be made to the persons who would be entitled to such producer's payment under the regulations contained in Part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1421.28 Kansas City Commodity Office and Management Field Office.

(a) Kansas City Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas 66208, will serve all States.

(b) Accounting, recording, and reporting for all States will be handled through Management Field Office, P.O. Box 205, Kansas City, Missouri 64141.

§ 1421.29 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB numbers 0560-0087 and 0560-0040 have been assigned.

[Amdt. 3, 49 FR 46708, Nov. 28, 1984]

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Barley

SOURCE: 47 FR 20744, May 14, 1982, unless otherwise noted.

§ 1421.50 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of barley.

[47 FR 20744, May 14, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.51 Eligible barley.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the barley must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The barley must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, 730, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the barley must also meet the following requirements:

(1) The barley must grade No. 5 or better, except that: (i) The barley may grade "Sample" on the factor of test weight or total damage (except heat damage) and (ii) the barley may have the following special grade designations: "Garlicky" and, in the State of Alaska only, "Tough."

(2) The barley must not grade "Blighted," "Bleached," "Ergoty," "Smutty," or, if Western Barley, "Stained."

(3) The barley must not grade "Weevily" or have moisture over 14.5 percent unless the warehouse receipt representing the barley is accompanied by a supplemental certificate which provides that the warehouseman shall deliver barley which is not "Weevily," does not contain in excess of 14.5 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.54(c).

§ 1421.52 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Barley, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

[47 FR 20744, May 14, 1982; 47 FR 23138, May 27, 1982]

§1421.53 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 48 pounds of barley free of dockage.

(a) *In warehouse.* The quantity of barley on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt or on the supplemental certificate, if applicable. If the barley has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the barley, when received, and 14.5 percent.

(b) *On farm.* The quantity of barley eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by weight of the barley at the time of delivery to CCC.

§ 1421.54 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of barley.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14.5 percent, (6) dockage, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) whether the barley arrived by rail, truck, or barge, (9) the date the barley was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the barley grades "Weevily" or contains over 14.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.51(b)(3) in order for the barley to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the barley has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14.5 percent and the barley has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the barley to a moisture of not over 14.5 percent which shall reflect a drying or blending shrink as specified in § 1421.53(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the barley represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.56. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the barley when CCC is holder of the warehouse receipt.

(e) *Freight certificate requirements.* Warehouse receipts representing barley which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission (ICC), from a country shipping point to a normal trade channel market or to a storage point and stored intransit to a normal trade channel market, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the barley and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) and shall be signed by the warehouseman.

§ 1421.55 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.56 Warehouse charges.

(a) The ASCS-KCCO approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan or purchase price in the case of barley stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges through the loan maturity date have been prepaid, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the barley represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) The beginning date to be used for computing the storage deduction on barley stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the barley was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.57 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible barley which is not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of barley the producer will sell to CCC.

§ 1421.58 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 20744, May 14, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.59 Support rates.

(a) *Basic county support rates.* Basic county support rates for barley and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored barley.* The support rate used for disbursing farm-stored barley loans shall be the applicable basic coulty support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for barley delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored barley loans and for barley acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with:

(1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for barley stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored barley received by rail or utilizing combination barge-rail rates*—(1) *When shipped by rail.* The applicable basic support rate for warehouse-stored loans on barley which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rate established for the county from which the barley was shipped the following:

(i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. The freight rate which is paid to bring the barley to the storage point shall not exceed the lowest rate which will permit the storage in transit privilege and protect the lowest single car rate applying from origin through point of storage to a normal trade channel market that would be used in commercial channels of trade. If the barley is destined to a normal trade channel market that would be used in commercial channels of trade but such barley is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on barley which is stored in an approved warehouse and which was shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic support rate established for the county from which the barley was shipped the following:

(i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. The freight rate, which is paid to ship the barley to the storage point, shall be a rate which will permit the storage in transit privilege and protect the lowest single car or barge freight rate applying from origin through point of storage to a normal trade channel that would be used in commercial channels of trade. If the barley is destined to a normal trade channel market that would be used in commercial channels of trade but such barley is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(e) ***Basic county support rates for warehouse-stored barley received by truck or nontariff barge.*** (1) The basic county support rate for barley delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the barley is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for barley delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge as computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$.0
20–50	$0.13 per bushel.
51–100 add	$0.0014 per bushel per mile.
101–125 add	$0.0007 per bushel per mile.
126 and over add	$0.0003 per bushel per mile.

(3) The basic county support rate for barley delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for barley shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

(f) ***Storing responsibilities.*** With respect to barley received by rail or by combination barge-rail, the storing warehouseman shall be responsible for determining the normal trade channel routes via the storing warehouse that will protect the lowest freight rate to the designated normal trade channel market that would be used in commercial channels of trade and for protecting such routes. The storing warehouseman shall also execute supplemental certificates showing: (1) The rate of freight paid into the storage point; (2) the amount of penalty, if any, for backhaul or out-of-line movement; (3) the applicable normal trade channel market that would be used in commercial channels of trade; and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

[47 FR 20744, May 14, 1982, as amended by Amdt. 1, 49 FR 23598, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

§ 1421.60 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB number 0560-0087 has been assigned.

[Amdt. 1, 49 FR 23598, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Corn

SOURCE: 47 FR 37865, Aug. 27, 1982, unless otherwise noted.

§ 1421.90 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of corn.

[47 FR 37865, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.91 Eligible corn.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the corn must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The corn must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Shelling requirements.* The corn may be ear or shelled corn: *Provided,* That the corn must be shelled before being placed under a warehouse-stored loan or before delivery is made under a farm-stored loan or purchase. If the corn is not shelled prior to delivery, the cost of shelling on or after delivery shall be for the account of the producer. A producer with a farm-stored loan on ear corn may with the approval of the county Agricultural Stabilization and Conservation committee shell the corn and keep it under loan on the farm.

(c) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, corn must also meet the following requirements:

(1) The corn must, except for moisture and test weight, grade No. 3 or better, or No. 4 or better on the factor of test weight.

(2) The corn must not grade "Weevily" or have moisture over 15.5 percent unless the warehouse receipt representing the corn is accompanied by a supplemental certificate which provides that the warehouseman shall deliver corn which is not "Weevily," does not contain in excess of 15.5 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.94(c).

§ 1421.92 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Corn, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§ 1421.93 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 56 pounds of corn free of dockage.

(a) *In warehouse.* The quantity of corn on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or on the supplemental certificate, if applicable. If the corn has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the corn, when received, and 15.5 percent.

(b) *On farm.* The quantity of corn eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the corn at the time of delivery to CCC.

§ 1421.94 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of corn.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture (6) broken corn and foreign material, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) whether the corn arrived by rail, truck, or barge, (9) the date the corn was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the corn grades "Weevily" or contains over 15.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.91(c)(2) in order for the corn to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the corn has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 15.5 percent and the corn has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the corn to a moisture of not over 15.5 percent which shall reflect a drying or blending shrink as specified in § 1421.93(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the corn represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.96. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the corn when CCC is holder of the warehouse receipt.

§ 1421.95 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.96 Warehouse charges.

(a) *Storage charges.* The Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan rate or purchase price in the case of corn stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges through the loan maturity date have been prepaid, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the corn represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on corn stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the corn was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.97 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before May 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible corn which is not under loan, such producer must execute and deliver to the county ASCS office on or before May 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of corn the producer will sell to CCC.

§ 1421.98 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase Agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37865, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.99 Support rates.

(a) *Basic county support rates.* Basic county support rates for corn and the schedule of premiums and discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored corn.* The support rate used for disbursing farm-stored corn loans shall be the applicable basic county support rate for the county where stored, adjusted only for weed control discounts where applicable. The settlement rate for corn delivered in settlement of a farm-stored loan shall be the applicable basic county support rates adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored regular loans and purchases.* The support rate for warehouse-stored corn loans and for corn acquired by CCC through the purchase program shall be the applicable basic county support rate for the county where stored, adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the coulty ASCS office for the applicable crop year. Such premiums and discounts for corn stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored reserve loans.* (1) The basic county support rate for corn delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the corn is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for corn delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point. In no case shall the truck freight charge added to the basic county support rate for corn delivered by truck by the producer to an in-line warehouse exceed 25 cents per bushel.

Map mileage	Allowance
0–19	$.0.
20–50	$0.15 per bushel.
51 to 100 add	$0.0016 per bushel per mile.
101 to 125 add	$0.0008 per bushel per mile.
126 and over	$.0.

(3) The basic county support rate for corn delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (d)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) the truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for corn shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (d)(2); and (iii) the origin truck receiving and load-out charges.

(5) baisc county support rate for corn which was received by rail and stored in an approved warehouse which is in-line of normal commercial channels of trade shall be determined by adding to the basic county support rate established for the county from which the corn was shipped, adjusted for the applicable premiums and discounts in the manner provided in paragraph (c) of this section, the following: (i) The amount of freight charges per bushel actually paid in; and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. The freight rate which is paid for delivery to the storage point shall not exceed the lowest rate which provides a storage in transit privilege; and the lowest single car freight rate, determined from point of origin through point of storage to a normal trade channel market that would be used in commercial channels of trade. If the corn is destined to a normal trade channel market that would be used in commercial channels of trade but such corn is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(6) The basic county support rate for corn which is stored in an approved warehouse and which is shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic county support rate established for the county from which the corn was shipped, adjusted for applicable premiums and discounts in the same manner as specified in paragraph (c) of this section, the following: (i) The amount of freight charges per bushel actually paid in; and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. The freight rate, which is paid to ship the corn to the storage point, shall not exceed the lowest rate which provides a storage in transit privilege; and the lowest single car or barge freight rate determined from point of origin through point of storage to a normal trade channel that would be used in commercial channels of trade. If the corn is destined to a normal trade channel market that would be used in commercial channels of trade but such corn is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

[Amdt. 1, 49 FR 23599, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

§ 1421.100 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB number 0560-0087 has been assigned.

[Amdt. 1, 49 FR 23599, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

Subpart—1978 and Subsequent Crops Flaxseed Purchase Program Regulations

SOURCE: 44 FR 10354, Feb. 20, 1979, unless otherwise noted.

§ 1421.150 Purpose.

This supplement contains program provisions which, together with the General Regulations Governing Price Support for the 1978 and Subsequent Crops and any amendments thereto or revisions thereof (such regulations are referred to in this subpart as "General Regulations") and the annual crop year supplement issued with respect to the crop of flaxseed for which price support is being requested, apply to price support purchases for the 1978 and subsequent crops of flaxseed.

§ 1421.151 Availability.

(a) *Where to request price support.* A producer shall request price support at the local county ASCS office of the county in which the flaxseed is stored or, if in an approved warehouse, at the county in which the producer resides.

(b) *Availability date.* The final availability date applicable to purchases will be specified in the annual crop year supplement to the regulations in this subpart, except that whenever the final date of availability falls on a nonworkday for county ASCS offices, the applicable final date shall be extended to include the next work day.

(c) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the eligible flaxseed: *Provided,* That the producer executes and delivers to the county office, prior to the final availability date, a Purchase Agreement (Form CCC-614) indicating the maximum quantity of flaxseed that will be sold to CCC. Delivery points for purchases shall be limited to those approved by the Kansas City Commodity Office.

(d) *Delivery period.* In the case the flaxseed not in an approved warehouse, the producer must make delivery of the flaxseed to CCC within the period of time after the final availability for purchase date, shown in the applicable crop supplement in accordance with delivery instructions issued by the county office. Delivery shall be made to the location specified in such instructions.

§ 1421.152 Eligible flaxseed.

To be eligible for purchase, the flaxseed (a) must be merchantable for crushing into oil and feed as determined by CCC, (b) must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals, and (c) must have been produced by an eligible producer on a farm who has complied with the set aside and normal crop acreage requirements as prescribed in Parts 718, 722, 728, 775, and 791 of this title and any amendments thereto.

§ 1421.153 Determination of quality.

The grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for flaxseed whether or not determinations are made on the basis of an official inspection.

§ 1421.154 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 56 pounds of flaxseed free of dockage. The quantity of flaxseed delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt, or on the supplemental certificate if applicable.

§ 1421.155 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with purchases must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade of flaxseed.

(b) *Entries.* Each warehouse receipt, or the warehouse supplemental certificate (in duplicate) properly identified with the warehouse receipt, must show: (1) Gross weight, and net bushels, (2) grade, (3) test weight, (4) moisture, (5) dockage, (6) any other grading factor(s) when such factor(s) and not test weight determines the grade, (7) whether the flaxseed arrived by rail, truck, or barge, and (8) the date the flaxseed was received or deposited in the warehouse.

(c) *Liens.* The warehouse receipts may be subject to liens for warehouse charges only to the extent indicated in § 1421.157.

(d) *Freight certificate requirements.* Warehouse receipts representing flaxseed which has been shipped by rail, or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission, from a country shipping point to a designated point or to a storage point and stored intransit to a normal market location, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the flaxseed and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the commodity office and shall be signed by the warehouse operator.

§ 1421.156 Delivery charges.

A delivery charge of ½ cent per bushel shall be paid by producers on the quantity of flaxseed delivered to CCC.

§ 1421.157 Warehouse charges.

(a) *Handling and storage liens.* Warehouse receipts and the flaxseed represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse storage and handling from the date the flaxseed is deposited in the warehouse for storage.

(b) *Responsibility for storage charges.* If the flaxseed is in store at an approved warehouse, the producer shall be responsible for storage charges through the date the flaxseed is acquired by CCC. If such charges have not been paid or provided for by the producer, a deduction shall be made from the settlement to cover such charges. The deduction shall be at the rate approved by CCC for the warehouse.

§ 1421.158 Support rates.

Basic county support rates for flaxseed and the schedule of premiums and discounts will be set forth in the annual flaxseed crop supplement to the regulations contained in this subpart. The support rate for flaxseed acquired by CCC shall be the applicable basic support rate adjusted in accordance with the provisions of this section and by the premiums and discounts in the annual flaxseed crop supplement on the basis of quality factors on warehouse receipts or supplemental certificates in the case of flaxseed stored in or delivered to an approved warehouse, or on such other form as CCC may prescribe in the case of flaxseed delivered to other than an approved warehouse. Settlement shall be made in accordance with the provisions of § 1421.22 of the General Regulations.

(a) *Basic support rates for farm-stored flaxseed.* The applicable basic support rate for farm-stored flaxseed shall be the basic county support rate established for the county in which the flaxseed is stored.

(b) *Basic support rates for flaxseed stored at approved warehouses.* The applicable basic price support rate for flaxseed purchased in approved warehouse storage shall be the support rate established for the county in which the warehouse is located. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(1) *Support rate for flaxseed delivered by truck by producer to in-line warehouse beyond normal delivery point.* The applicable support rate shall be the support rate for the county from which shipped plus the following truck freight allowance from the farm to the storing warehouse minus the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$.0
20–50	$.06
51–100	$.0010
101 and over	$.0004 per bushel per mile

(2) *Support rate for flaxseed delivered to a warehouse and shipped by truck to in-line warehouse.* The applicable support rate shall be the support rate for the county in which the shipping warehouse is located plus truck freight from schedule shown in paragraph (b) of this section plus truck receiving and truck load out charges for the shipping warehouse.

(3) *Support rate for flaxseed shipped by rail or utilizing combination barge-rail rates on file with ICC to in-line warehouse.* The applicable support rate shall be the support rate for the county from which shipped plus freight (from supplemental certificate) plus origin truck receiving and rail load out reduced by any penalty for out of line shipment or backhaul.

(4) *Support rate for flaxseed shipped by truck or barge to in-line warehouse at negotiated rate.* The applicable support rate shall be the support rate for the county from where shipped plus truck freight from schedule shown in paragraph (b)(1) of this section plus origin truck receiving and load out charge.

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Sorghum

SOURCE: 47 FR 37862, Aug. 27, 1982, unless otherwise noted.

§ 1421.210 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of sorghum.

[47 FR 37862, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.211 Eligible sorghum.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the sorghum must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The sorghum must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the sorghum must also meet the following requirements:

(1) The sorghum must grade No. 4 or better, except for moisture, and may carry the special grade designation "Smutty."

(2) The sorghum must not grade "Weevily" or have moisture over 14 percent unless the warehouse receipt representing the sorghum is accompanied by a supplemental certificate which provides that the warehouseman shall deliver sorghum which is not "Weevily," does not contain in excess of 14 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.214(c).

§ 1421.212 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Sorghum, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§ 1421.213 Determination of quantity.

When the quantity is determined by weight, a hundredweight shall be 100 pounds of sorghum free of dockage.

(a) *In warehouse.* The quantity of sorghum on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt or on the supplemental certificate, if applicable. If the sorghum has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the sorghum, when received, and 14 percent.

(b) *On farm.* The quantity of sorghum eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the sorghum at the time of delivery to CCC.

§ 1421.214 Warehouse receipts

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of sorghum.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross and net weight, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14 percent, (6) dockage, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) whether the sorghum arrived by rail, truck, or barge, (9) the date the sorghum was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipts shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the sorghum grades "Weevily" or contains over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in §1421.211(b)(2) in order for the sorghum to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the sorghum has been conditioned to correct the "Wee-

vily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14 percent and the sorghum has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the sorghum to a moisture of not over 14 percent which shall reflect a drying or blending shrink as specified in § 1421.213(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the sorghum represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.216. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the sorghum when CCC is holder of the warehouse receipt.

(e) *Freight certificate requirements.* Warehouse receipts representing sorghum which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission (ICC), from a country shipping point to a normal trade channel market or to a storage point and stored intransit to a normal trade channel market, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the sorghum and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) and shall be signed by the warehouseman.

§ 1421.215 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.216 Warehouse charges.

(a) *Storage charges.* The ASCS-KCCO approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan rate or purchase price in the case of sorghum stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges have been prepaid through the loan maturity date, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the sorghum represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on sorghum stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the sorghum was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.217 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before May 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible sorghum which is not under loan, such producer must execute and deliver to the county ASCS office on or before May 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of sorghum the producer will sell to CCC.

§ 1421.218 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase Agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37862, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.219 Support rates.

(a) *Basic county support rates.* Basic county support rates for sorghum and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored sorghum.* The support rate used for disbursing farm-stored sorghum loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for sorghum delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored sorghum loans and for sorghum acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for sorghum stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored sorghum received by rail or utilizing combination barge-rail rates*—(1) *When shipped by rail.* The applicable basic support rate for warehouse-stored loans on sorghum which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rate established for the county from which the sorghum was shipped the following: (i) The amount of freight charges per hundredweight actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. If the sorghum is destined to a normal trade channel market that would be used in commercial channels of trade but such sorghum is stored in an approved warehouse resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on sorghum which is stored in an approved warehouse and which was shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic support rate established for the county from which the sorghum was shipped the following: (i) The amount of

freight charges per hundredweight actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. If the sorghum is destined to a normal trade channel market that would be used in commercial channels of trade but such sorghum is stored in an approved warehouse resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(e) *Basic county support rates for warehouse-stored sorghum received by truck or nontariff barge.* (1) The basic county support rate for sorghum delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the sorghum is stored, adjusted for premiums and discounts as prescribed in subsection (c).

(2) The basic county support rate for sorghum delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$.0.
20–50	$0.0268 per hundredweight.
51 to 100 add	$0.0029 per hundredweight per mile.
101 to 125 add	$0.0014 per hundredweight per mile.
126 and over add	$0.0007 per hundredweight per mile.

(3) The basic county support rate for sorghum delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for sorghum shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

(f) *Storing responsibilities.* With respect to sorghum received by rail or by combination barge-rail, the storing warehouseman shall be responsible for determining the normal trade channel market that would be used in commercial channels of trade. The storing warehouseman shall also execute supplemental certificates showing: (1) The rate of freight paid into the storage point; (2) the amount of penalty, if any, for backhaul or out-of-line movement; (3) the applicable normal trade channel market that would be used in commercial channels of trade; and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

[47 FR 37862, Aug. 27, 1982, as amended by Amdt. 1, 49 FR 23600, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

§ 1421.220 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB number 0560-0087 has been assigned.

[Amdt. 1, 49 FR 23601, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops of Oats

SOURCE: 47 FR 37867, Aug. 27, 1982, unless otherwise noted.

§ 1421.245 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of oats.

[47 FR 37867, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.246 Eligible oats.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the oats must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The oats must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the oats must also meet the following requirements:

(1) The oats must grade No. 3 or better, except that: (i) The oats may grade No. 4 on the factor of test weight and/or because of being badly stained or materially weathered and (ii) the oats may have the special grade designation "Garlicky."

(2) The oats must not grade "Smutty," "Ergoty," "Bleached," "Thin," or otherwise distinctly low quality.

(3) The oats must not grade "Weevily" or have moisture over 14 percent unless the warehouse receipt representing the oats is accompanied by a supplemental certificate which provides that the warehouseman shall deliver oats which are not "Weevily," does not contain in excess of 14 percent moisture, and are otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.249(c).

§ 1421.247 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for oats, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§ 1421.248 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 32 pounds of oats.

(a) *In warehouse.* The quantity of oats on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or on the supplemental certificate, if applicable. If the oats have been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight of 1.2 times the percentage difference between the moisture content of the oats, when received, and 14 percent.

(b) *On farm.* The quantity of oats eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the oats at the time of delivery to CCC.

§ 1421.249 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of oats.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Net weight and bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14 percent, (6) any other grading factor(s) when such factor(s) and not test weight determine the grade, (7) whether the oats arrived by rail, truck, or barge, (8) the date the oats were received or deposited in the warehouse, and (9) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the oats grade "Weevily" or contain over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.246(b)(3) in order for the oats to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the oats have been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14 percent and the oats have been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the oats to a moisture of not over 14 percent which shall reflect a drying or blending shrink as specified in § 1421.248(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the oats represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.251. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the oats when CCC is holder of the warehouse receipt.

§ 1421.250 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.251 Warehouse charges.

(a) *Storage charges.* The Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan rate or purchase price in the case of oats stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges through the loan maturity date have been prepaid, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

"Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the oats represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on oats stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the oats were received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.252 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible oats which are not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of oats the producer will sell to CCC.

§ 1421.253 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37867, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.254 Support rates.

Basic county support rates for oats and the schedule of premiums and discounts will be available in the county ASCS office for the applicable crop each year. Farm-stored oat loans will be made at the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The support rate for warehouse-stored oat loans and for oats acquired by CCC through the purchase program or oats delivered in settlement of a farm-stored loan shall be the applicable basic support rate for the county where stored, adjusted in accordance with the provisions of this section and the discounts which are available in the county ASCS office for the applicable crop year on the basis of quality factors on warehouse receipts of supplemental certificates in the case of oats stored in or delivered to an approved warehouse or on such other form as CCC may prescribe in the case of oats delivered to other than an approved warehouse. Settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

Subpart—1985 Crops Peanut Farm-Stored Loan and Purchase Program

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c; secs. 108A, 401, 403, 405, 63 Stat. 1051, as amended, 95 Stat. 1254 (7 U.S.C. 1445c-1, 1421, 1423, 1425).

SOURCE: 47 FR 54282, Dec. 2, 1982, and 49 FR 23827, June 8, 1984, unless otherwise noted.

§ 1421.280 Purpose.

This subpart, the Poundage Quota Regulations in effect for the applicable crop year in Chapter VII of this Title 7 (hereinafter referred to as "poundage quota regulations"), and the General Regulations Governing Price Support for the 1985 and Subsequent Crops in this Subchapter B (hereinafter referred to as the "general regulations") to the extent that the provisions thereof are not made inapplicable by the provisions of this subpart, set forth the terms and conditions under which the Commodity Credit Corporation (CCC) will make farm-stored peanut loans to and purchases from eligible producers on eligible 1985 crop farmers stock peanuts. The General Regulations Governing 1985 Crops Peanut Warehouse Storage Loans and Handler Operations in this

Subchapter B, and any amendments and annual notices published in the Federal Register with respect thereto (hereinafter referred to in this subpart as "the peanut warehouse storage regulations"), set forth the terms and conditions under which eligible producers may obtain price support advances on warehouse-stored farmers stock peanuts from certain area marketing associations which, acting in behalf of such producers collectively, will obtain price support warehouse storage loans from CCC.

[47 FR 54282, Dec. 2, 1982; 49 FR 23827, June 8, 1984, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.281 Availability.

(a) *Loans.* Requests for loans on eligible farm-stored additional peanuts must be submitted by producers to the appropriate county ASCS office on or before January 31 of the year following the year in which the crop was produced. Requests for loans on eligible farm-stored quota peanuts must be submitted by producers to the appropriate county ASCS office on or before March 31 of the year following the year in which the crop was produced.

(b) *Purchases.* Producers desiring to offer for purchase eligible quota peanuts not under loan must execute and deliver to the appropriate county ASCS office, on or before April 30 of the year following the year in which the crop was produced, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of peanuts to be sold to CCC. Additional peanuts are not eligible for purchase.

§ 1421.282 Eligible peanuts.

(a) *General.* In order to be eligible for a farm-stored peanut loan or purchase, farmers stock peanuts, as defined in § 1446.52 of the peanut warehouse storage regulations, must meet the requirements of this section in addition to the other eligibility requirements of § 1421.4 of the general regulations.

(b) *Eligible producer*—(1) *General requirements.* The peanuts must have been produced by an eligible producer in the United States or Puerto Rico. For the purpose of this subpart, an eligible producer is a producer who meets the requirements of § 1421.3 of the general regulations, § 1446.63 of the peanut warehouse storage regulations, and (if applicable) paragraph (b)(2) of this section.

(2) *Other requirements for producers obtaining loans on additional peanuts.* Producers must register as a handler in accordance with 7 CFR Part 729 prior to applying for a loan on additional peanuts.

(c) *Types.* The peanuts must be one of the types specified in 7 CFR Part 729.

(d) *Identity preserved.* The peanuts must be stored separately from peanuts produced on any other farm and handled in such a manner that the actual peanuts produced on the farm and no others will be delivered to CCC in settlement of the loan.

§ 1421.283 Determination of type and quality of farmers stock peanuts.

The type, quality, and quantity of each lot of farmers stock peanuts acquired by CCC as a result of a loan or purchase shall be determined at the time of delivery to CCC by a Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

§ 1421.284 Determination of quantity.

The quantity of peanuts placed under farm-stored peanut loans shall be determined in accordance with § 1421.17 of the general regulations and shall be expressed in units of tons and tenths of tons. Notwithstanding the provisions of § 1421.17 of the general regulations, loans shall be made on 100 percent of the estimated quantity of additional peanuts.

§ 1421.285 Price support rates.

(a) *Quota peanuts.* Loans and purchases on quota peanuts shall be at the basic quota price support loan rate for that type of farmers stock peanuts which is published annually as a notice in the Federal Register.

(b) *Additional peanuts.* Loans on additional peanuts shall be made on the basis of a specified percentage of the basic quota price support loan rate for that type farmers stock peanuts which is published annually as a notice in the FEDERAL REGISTER.

§ 1421.286 Fees and charges.

(a) *Loan service fee.* A producer shall pay a loan service fee as provided in § 1421.11 of the general regulations. The loan service fee is not refundable.

(b) *Delivery charge.* A delivery charge, in addition to the loan service fee, shall be paid by producers on the quantity of peanuts delivered to CCC at a rate of twenty cents ($0.20) for each whole short ton.

(c) *Other charges.* CCC will not pay storage or handling charges on any peanuts under farm-stored loans.

§ 1421.287 Transfer of farm-stored loan to warehouse stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.288 Maturity of loans.

Farm-stored peanut loans will mature on demand but no later than April 30 of the year following the year in which the crop was produced.

§ 1421.289 Producer-handler purchases of additional peanuts under loan.

(a) *General.* Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at the applicable sales price which is published annually as a notice in the FEDERAL REGISTER.

(3) For crushing (either domestic or export), at the additional support level.

(b) *Purchases on or before January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) *Purchases after January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.290 Required producer-handler records and supervision of farm-stored additional peanuts under loan or purchased by a producer-handler from loan.

(a) *Required records*—(1) *Inspected Peanuts.* Each producer-handler shall maintain records as required in 7 CFR Part 1446 for all additional peanuts which are purchased and sold for which an ASCS-1007, Inspection Certificate and Sales Memorandum, is issued.

(2) *Peanuts which are not inspected.* The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the

end of the marketing year in which the peanuts were produced.

(b) *Supervision of farm-stored peanuts*—(1) *Under loan.* The county office shall inspect and account for all additional peanuts under loan as determined necessary by the county committee.

(2) *Additional peanuts purchased for use as seed and not inspected.* The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts under loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) *Additional peanuts on which ASCS-1007 is issued.* The producer-handler shall be subject to all provisions in Part 1446 relating to the disposition of additional peanuts.

(c) *Costs of supervision.* The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) *Penalties.* The producer-handler is subject to penalties as provided in § 1446.59 with respect to any peanuts purchased in accordance with § 1421.289.

§ 1421.291 Settlement on peanuts acquired by CCC.

(a) *General.* Settlement for eligible peanuts acquired by CCC under a loan or purchase will be made with the producer as provided in 7 CFR 1421.22 of the general regulations and in this section.

(b) *Settlement values*—(1) *General.* The settlement value of peanuts acquired by CCC shall be the amount computed on the basis of the net weight and quality thereof, with an allowance of four percent for Virginia type and three and one-half percent for types other than Virginia type to compensate the producer for shrinkage during storage on peanuts delivered after January 31 of the year following the year in which the crop was produced and less discounts of (i) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent, and (ii) $10 per ton, net weight, for peanuts containing more than 10 percent moisture. There will be no allowance for shrinkage during storage of peanuts delivered before February 1 of the year following the year in which the crop was produced.

(2) *Values for quota peanuts.* The settlement value for quota peanuts shall be the applicable quota support rates, including premiums and discounts which are published annually as a notice in the FEDERAL REGISTER, except that if a producer delivers peanuts from a farm to CCC the quantity of which would exceed the farm poundage quota when added to the peanuts otherwise marketed or considered marketed from the farm as quota peanuts, the additional support rate shall be used with respect to such peanuts if CCC determined that the producer made an inadvertent error in determining the loan quantity. However, if such excess quantity was not due to an inadvertent error, such quantity shall not be accepted and shall be subject to poundage quota penalties as set forth in 7 CFR Part 729. In addition, the additional support rate shall be used for all peanuts which do not grade Segregation 1 at time of delivery if the producer does not elect to settle such additional loan peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the smaller of: (i) the difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; (ii) or the amount of undermarketings of quota peanuts shown on the farm marketing card.

(3) *Values for additional peanuts.* The settlement value for additional peanuts shall be the applicable additional support rate including the premiums and discounts as published annually in a notice in the FEDERAL REGISTER.

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Rice

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c); secs. 101(i), 401, 95 Stat. 1242, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421).

SOURCE: 47 FR 50199, Nov. 5, 1982, unless otherwise noted.

§ 1421.300 Purpose.

This subpart contains provisions which, together with: (a) The General Regulations Governing Price Support for the 1985 and Subsequent Crops: (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title; and (c) any amendments or revisions of such regulations, set forth in requirements with respect to price support for the 1985 and subsequent crops of rice.

[49 FR 29565, July 23, 1984, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.301 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible rice which is not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of rice the producer will sell to CCC.

§ 1421.302 Eligible rice.

(a) *General.* To be eligible for loans and purchases, rice must meet the requirements of this section in addition to the other eligibility requirements of the program.

(1) *Eligible producer.* The rice must have been produced by an eligible producer.

(2) *Classes.* The rice must be one of the classes specified in: (i) A notice which is published in the FEDERAL REGISTER for the applicable crop each year or (ii) the official standards of the United States for rough rice other than "mixed rough rice."

(3) *Contamination and poisonous substances.* Rice must not be contaminated by rodents, birds, insects, or other vermin or contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(b) *Grade requirements for loans.* In addition to the requirements of paragraph (a) of this section, rice at the time it is placed under loan must (1) Grade U.S. No. 5 or better (rice of special grades shall not be eligible), and (2) contain not more than 14 percent moisture.

(c) *Quantity eligible for loan and purchase.* Loans and purchases shall be available to eligible producers on all rice produced on a participating farm.

(d) *Cooperative Marketing Association.* If an eligible producer is a member of an approved cooperative and delivers a quantity of eligible rice produced on a participating farm to the cooperative for marketing, such rice shall be eligible for the cooperative to place under loan or deliver for purchase.

§ 1421.303 Eligible producer.

An eligible producer is a rice producer who shares in the production of rice on a participating farm and has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

§ 1421.304 Determination of quality.

(a) *Quality.* The class, grade, grading factors, milling yield, and all other quality factors shall be determined in accordance with the official standards of the United States for rough rice, whether or not such determinations are made on the basis of an official inspection.

(b) *Loans and purchases.* In the case of rice stored commingled in an approved warehouse, loans and purchases will be made on the basis of the quality shown on the warehouse receipt or supplemental certificate, if applicable. Loans and purchases on farm-stored rice will be based on the rate published in a notice in the FEDERAL REGISTER for the applicable crop year.

[47 FR 50199, Nov. 5, 1982, as amended at 49 FR 29565, July 23, 1984]

§ 1421.305 Determination of quantity.

(a) *In warehouse.* The amount of a loan on the quantity of eligible rice stored commingled in an approved warehouse shall be based on the weight specified on the warehouse receipts representing such rice which is pledged as security for the loan, or on the supplemental certificate, if applicable.

(b) *On farm.* The quantity of rice placed under a farm storage loan shall be determined in accordance with § 1421.17 and shall be expressed in whole units of 100 pounds.

[47 FR 50199, Nov. 5, 1982, as amended at 49 FR 29565, July 23, 1984]

§ 1421.306 Warehouse receipts.

(a) *General.* A warehouse receipt representing rice to be placed under a warehouse storage loan, delivered in satisfaction of a farm storage loan, or delivered for purchase must meet the requirements of this section and the general regulations governing price support for 1978 and subsequent crops, as amended or revised. A separate warehouse receipt must be submitted for each class by grade, and milling yield of rice. Each warehouse receipt must carry an endorsement by the warehouse operator in substantially the following form: "Warehouse charges through (applicable maturity date) including, but not limited to, receiving and loading out charges accrued or to accrue and all other charges incident to the acquisition of the rice by CCC on the rice represented by this warehouse receipt have been paid or otherwise provided for and a lien for such charges will not be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt."

(b) *Entries.* Each warehouse receipt or supplemental certificate properly identified with the warehouse receipt must be issued in accordance with the Uniform Rice Storage Agreement. The following items must be shown on the warehouse receipt and/or supplemental certificate:

(1) Net weight;

(2) Class;

(3) Grade;

(4) Grading factors;

(5) Milling yield;

(6) Moisture;

(7) That the rice is stored commingled;

(8) The manner by which rice was received (truck or rail).

(c) *Supplemental certificate.* When required, the supplemental certificate shall be executed by the warehouse operator for commingled rice.

[47 FR 50199, Nov. 5, 1982, as amended at 49 FR 29566, July 23, 1984]

§ 1421.307 Warehouse charges.

(a) *Farm-stored loans and purchases.* CCC will assume receiving and warehouse storage charges with respect to rice delivered to an approved warehouse after loan maturity date and acquired by CCC (1) in satisfaction of a farm-stored loan or (2) by purchase, except that warehouse storage charges will be assumed by CCC only from and after the date of completion of deposit of such rice in the warehouse.

(b) *Warehouse-stored loans and purchases.* CCC will assume receiving and warehouse storage charges accruing on or after the day following the loan maturity date with respect to rice which is in approved warehouse storage under loan and is acquired by CCC and with respect to rice which is in approved warehouse storage on the loan maturity date and is purchased by CCC.

(c) *Refund of prepaid handling charges.* The receiving or the receiving and loading out charges to be refunded on the rice referred to in paragraphs (a) and (b) of this section and § 1421.22(i) shall be at the rate charged the producer by the storing warehouse.

[47 FR 50199, Nov. 5, 1982, as amended at 49 FR 29566, July 23, 1984]

§ 1421.308 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

[49 FR 29566, July 23, 1984]

§ 1421.309 [Reserved]

§ 1421.310 Settlement.

(a) Settlement for eligible rice acquired by CCC under loan or by purchase will be made with the producer as provided in § 1421.22 and this section. Where rice is placed under a farm storage loan in an area where a location differential is in effect and is delivered to CCC in satisfaction of the loan in an area where no differential is applicable, settlement for rice acquired by CCC will be made on the basis of the support rate for the area where the rice is delivered. Deliveries of rice shall be in accordance with instructions issued by the county office.

(b) *Commingled warehouse storage.* Settlement for eligible rice stored commingled in an approved warehouse and acquired by CCC under loan or by purchase shall be made on the basis of the class and the grade, quality, and quantity as shown on the warehouse receipt or supplemental certificate, if applicable.

(c) *Farm storage.* Settlement for eligible rice acquired under loan or purchase delivered into an approved warehouse from farm storage pursuant to instructions of the county ASCS office, where the warehouse issues a commingled warehouse receipt, shall be made on the basis of the class and the grade, quality and quantity as shown on the warehouse receipt or supplemental certificate, if applicable. Settlement for eligible rice acquired under loan or purchase delivered to CCC at other than an approved warehouse shall be made on the basis of the class and the grade and quality shown on the Federal or Federal-State sample inspection certificate and on the basis of the quantity shown on the weight certificates.

[47 FR 50199, Nov. 5, 1982, as amended at 49 FR 29566, July 23, 1984]

§ 1421.311 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans mature on demand but not later than April 30 of the year following the year the rice is normally harvested.

(b) *Purchases.* Purchase agreements expire on April 30 of the year following the year the rice is normally harvested.

§ 1421.312 Support rates.

The basic support rate, premium and discounts, and the location differentials for use in making loans and purchases will be available in the county ASCS office for the applicable crop year.

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Rye

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 105 B, 401, 95 Stat. 1227, 63 Stat. 1051, as amended (7 U.S.C. 1444d, 1421)

SOURCE: 47 FR 37870, Aug. 27, 1982, unless otherwise noted.

§ 1421.335 Purpose.

This subpart contains program provisions which, together with: (a) The General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of rye.

[47 FR 37870, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.336 Eligible rye.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the rye must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The rye must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the rye must also meet the following requirements:

(1) The rye must grade No. 2 or better, except that: (i) The rye may grade "U.S. No. 3" on the factor of test weight or "thin" grade, or both, but otherwise must grade U.S. No. 2 or better.

(2) The rye must not grade "Light Smutty," "Light Garlicky," "Garlicky," or contain in excess of 1 percent "Ergoty."

(3) The rye must not grade "Weevily" or have moisture over 14 percent unless the warehouse receipt representing the rye is accompanied by a supplemental certificate which provides that the warehouseman shall deliver rye which is not "Weevily," does not contain in excess of 14 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.339(c).

§ 1421.337 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for rye, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§ 1421.338 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 56 pounds of rye free of dockage.

(a) *In warehouse.* The quantity of rye on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or on the supplemental certificate, if applicable. If the rye has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the rye, when received, and 14 percent.

(b) *On farm.* The quantity of rye eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the rye at the time of delivery to CCC.

§ 1421.339 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of rye.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14 percent, (6) dockage, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) whether the rye arrived by rail, truck, or barge, (9) the date the rye was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the rye grades "Weevily" or contains over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.336 (b)(3) in order for the rye to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the rye has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14 percent and the rye has been dried or

blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the rye to a moisture of not over 14 percent which shall reflect a drying or blending shrink as specified in § 1421.338(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the rye represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.341. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the rye when CCC is holder of the warehouse receipt.

(e) *Freight certificate requirements.* Warehouse receipts representing rye which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission (ICC), from a country shipping point to a normal trade channel market or to a storage point and stored in transit to a normal trade channel market, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the rye and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) and shall be signed by the warehouseman.

§ 1421.340 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in §1421.11.

§ 1421.341 Warehouse charges.

(a) *Warehouse charges.* The ASCS-KCCO approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan or purchase price in the case of rye stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges have been prepaid through the loan maturity date, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the rye represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on rye stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the rye was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.342 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible rye which is not under loan, such producers must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of rye the producer will sell to CCC.

§ 1421.343 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37870, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.344 Support rates.

(a) *Basic county support rates.* Basic county support rates for rye and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored rye.* The support rate used for disbursing farm-stored rye loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for rye delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragaph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored rye loans and for rye acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for rye stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored rye received by rail or utilizing combination barge-rail rates*—(1) *When shipped by rail.* The applicable basic support rate for warehouse-stored loans on rye which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rate established for the county from which the rye was shipped the following: (i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. If the rye is destined to a normal trade channel market that would be used in commercial channels of trade but such rye is stored in an approved warehouse resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basis support rate for warehouse-stored loans on rye which is stored in an approved warehouse and which was shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic support rate established for the county from which the rye was shipped the following: (i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. If the rye is destined to a normal trade channel market that would be used in commercial channels of trade but such rye is stored in an approved warehouse resulting in additional costs because of out-of-line

movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(e) *Basic county support rates for warehouse-stored rye received by truck or nontariff barge.* (1) The basic county support rate for rye delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the rye is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for rye delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	$.0.
20–50	$0.15 per bushel.
51 to 100 add	$0.0016 per bushel per mile.
101 to 125 add	$0.0008 per bushel per mile.
126 and over add	$0.0004 per bushel per mile.

(3) The basic county support rate for rye delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) The support rate for the county in which the shipping warehouse is located; (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for rye shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

(f) *Storing responsibilities.* With respect to rye received by rail or by combination barge-rail, the storing warehouseman shall be responsible for determining the normal trade channel market that would be used in commercial channels of trade. The storing warehouseman shall also execute supplemental certificates showing: (1) The rate of freight paid into the storage point; (2) the amount of penalty, if any, for backhaul or out-of-line movement; (3) the applicable normal trade channel market that would be used in commercial channels of trade; and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

[47 FR 37870, Aug. 27, 1982, as amended at 49 FR 23600, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

§ 1421.345 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB number 0560-0087 has been assigned.

[Amdt. 1, 49 FR 23600, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Soybeans

SOURCE: 47 FR 37873, Aug. 27, 1982, unless otherwise noted.

§ 1421.365 Purpose.

This subpart contains program provisions which, together with (a) the

General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of soybeans.

[47 FR 37873, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.366 Eligible soybeans.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the soybeans must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The soybeans must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the soybeans must also meet the following requirements:

(1) The soybeans must grade No. 4 or better.

(2) The soybeans must not grade "Weevily" or have moisture over 14 percent unless the warehouse receipt representing the soybeans are accompanied by a supplemental certificate which provides that the warehouseman shall deliver soybeans which are not "Weevily," does not contain in excess of 14 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.369(c).

§ 1421.367 Determination of quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Soybeans, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§ 1421.368 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 60 pounds of soybeans free of foreign material in excess of 1 percent. The weight of foreign material in excess of 1 percent shall be deducted from the gross weight in the determination of the net number of bushels of soybeans.

(a) *In warehouse.* The quantity of soybeans on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or on the supplemental certificate, if applicable. If the soybeans have been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight of 1.2 times the percentage difference between the moisture content of the soybeans, when received, and 14 percent.

(b) *On farm.* The quantity of soybeans eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the soybeans at the time of delivery to CCC.

§ 1421.369 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of soybeans.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14 percent, (6) percentage of foreign material, (7) any other grading factor(s) when such factor(s) and not test weight or moisture determine the grade, (8) whether the soybeans arrived by rail, truck or barge, (9) the date the soybeans were received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the soybeans grade "Weevily" or contain over 14 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.366(b)(2) in order for the soybeans to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the soybeans have been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14 percent and the soybeans have been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the soybeans to a moisture of not over 14 percent which shall reflect a drying or blending shrink as specified in § 1421.368(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the soybeans represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "USGA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.371. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the soybeans when CCC is holder of the warehouse receipt.

§ 1421.370 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.371 Warehouse charges.

(a) *Storage charges.* The Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan rate or purchase price in the case of soybeans stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges through the loan maturity date have been prepaid, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges through the applicable maturity date accrued or to accrue prior to the acquisition by CCC of the soybeans represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on soybeans stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the soybeans were received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.372 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before May 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible soybeans which are not under loan, such producer must execute and deliver to the county ASCS office on or before May 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of soybeans the producer will sell to CCC.

§ 1421.373 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37873, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.374 Support rates.

Basic county support rates for soybeans and the schedule of premiums and discounts will be available at the county ASCS office for the applicable crop each year. Farm-stored soybean loans will be made at the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The support rate for warehouse-stored soybeans acquired by CCC through the purchase program or soybeans delivered in settlement of a farm-stored loan shall be the applicable basic support rate for the county where stored adjusted in accordance with the provisions of this section and the premiums and discounts which are available at the county ASCS office for the applicable crop each year on the basis of quality factors on warehouse receipts or supplemental certificates in the case of soybeans stored in or delivered to an approved warehouse or on such other form as CCC may prescribe in the case of soybeans delivered to other than approved warehouse. Settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

Subpart—1972 and Subsequent Crops Flue-Cured Tobacco Farm-Stored Loan Program

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended; sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, 74 Stat. 6; (7 U.S.C. 1441, 1445, 1421, 1423, 15 U.S.C. 714b, 714c).

SOURCE: 37 FR 16931, Aug. 23, 1972, unless otherwise noted.

§ 1421.400 Purpose.

This subpart contains the terms and conditions under which CCC will make farm-storage loans to eligible producers of eligible 1972 and subsequent crops Flue-cured tobacco. The terms and conditions of the annual crop year Flue-cured tobacco farm-stored loan supplement, and to the extent the provisions thereof are not inconsistent herewith or not made inapplicable by the provisions of this subpart, the terms and conditions of the Subpart—General Regulations Governing Price Support for 1970 and Subsequent Crops (§§ 1421.1 *et seq.*) of this part (hereinafter referred to as "the general regulations") are also applicable to farm-stored loans on Flue-cured tobacco. Notwithstanding the provisions of the general regulations, CCC will not make warehouse storage loans to or direct purchases from producers. The tobacco loan program regulations set forth in Part 1464 of this chapter (hereinafter referred to as "the association regulations") contain the terms and conditions under which eligible producers may obtain advances on eligible 1972 and subsequent crop Flue-cured tobacco from a cooperative marketing association which, acting in behalf of such producers collectively, will obtain warehouse storage loans from CCC.

§ 1421.401 Availability.

Producers desiring a farm storage loan on Flue-cured tobacco shall request a loan at the county ASCS office not later than the date set forth in the annual crop year supplement. Producers obtaining a loan shall execute a farm-storage note, chattel mortgage, and security agreement and a tobacco addendum amending sections 6 and 7 thereof.

§ 1421.402 Eligible tobacco and producers.

(a) *General.* In order to be eligible for a farm-storage loan on Flue-cured tobacco, the producer and the tobacco must meet the requirements of this section in addition to the other eligibility requirements of § 1421.4 of the general regulations.

(b) *Eligible producer.* The tobacco must have been produced by an eligible producer, as defined in § 1421.3 of the general regulations and § 1464.7 of the association regulations in this subchapter.

(c) *Eligible tobacco.* Flue-cured tobacco is eligible for a farm-storage loan under this subpart if it meets the eligibility requirements of § 1464.8 of the association regulations in this subchapter.

§ 1421.403 Release of commodity under loan.

(a) Notwithstanding the provision of § 1421.19 of the general regulations, prior approval from the county committee will not be required in order for a producer to sell his tobacco or to offer it to a cooperative association for a price support advance under the association regulations.

(b) A producer who has received a loan under this subpart, before accepting payment upon a sale of his tobacco, must advise the buyer or the marketing recorder as to whether or not such tobacco is security for a farm-storage loan; and, if such tobacco is security for a farm-storage loan, the proceeds of sale shall be forwarded by the buyer or marketing recorder to the county ASCS office which made the loan to be applied in liquidation of the loan.

§ 1421.404 Liquidation of loans.

Loans may be liquidated by (a) repayment of the loan amount plus interest on or before the maturity date specified in the annual crop year supplement, or (b) delivery as directed by CCC, as specified in the annual crop year supplement, to a cooperative association of a quantity of Flue-cured tobacco having a settlement value equal to the outstanding balance of the loan.

§ 1421.405 Settlement of loans.

For the purposes of this subpart, the settlement value of tobacco delivered to a cooperative association shall be (a) the amount which may be advanced to the producer with respect to such tobacco under the association regulations, or (b) if the tobacco delivered is of grade or quality which is not eligible for an advance under the association regulations, the market value of the tobacco, as determined by CCC. For the purposes of § 1421.16 of the general regulations, the settlement value shall be the amount of the farm-storage loan with respect to the tobacco involved in the loss, less salvage. If the tobacco delivered is of a grade eligible for a price-support loan under the association regulations, a price-support advance will be made by the cooperative association to the producer under the association regulations and the proceeds of the advance, to the extent necessary, will be applied to repayment of the principal of the loan made hereunder. If the settlement value of the tobacco delivered by the producer to the association is less than the amount due on the principal on the loan, the amount of the deficiency, plus interest thereon computed in accordance with the provisions of the note, shall be paid by the producer to the county office which approved the loan, unless the deficiency is one which will be assumed by CCC pursuant to the terms of the note.

§ 1421.406 Farm storage interim loan rate.

The farm storage interim loan rate for Flue-cured tobacco shall be that set forth in the annual crop year supplement.

Subpart—1978 Crop Farm-Stored Flue-Cured Tobacco Loan Supplement

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 106, 401, 403, 63 Stat. 1051 (7 U.S.C. 1441, 1445, 1421, and 1423).

SOURCE: 43 FR 29267, July 7, 1978, unless otherwise noted.

§ 1421.420 Availability.

Producers may obtain farm storage loans on their eligible Flue-cured tobacco stored in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. To do so, they must request such loans at the local county ASCS office not later than November 1, 1978.

§ 1421.421 Farm storage interim loan rate.

The loan rate will be 91 cents per pound for regular varieties or 46 cents per pound for discount varieties on the quantity of eligible tobacco offered as security for such loans. Producers must certify that the grade of the variety of the tobacco offered is equal to or better than the average grade of a normal crop. If a producer certifies that the grade is below such average quality, the loan rate shall be 15 cents less than the loan rate which would otherwise apply.

§ 1421.422 Rate of interest.

Loans shall bear interest at the rate announced in a separate notice published in the FEDERAL REGISTER.

§ 1421.423 Liquidation of loans.

(a) Section 1421.19 of the general regulations (liquidation of farm storage loans) shall not apply to this program. Loans shall be liquidated by one of the following methods, at the producer's option:

(1) Repayment of the principal, plus interest, on or before maturity to the county office which approved the loan. Repayment may be made by the producer, by the buyer, or by the marketing recorder when the tobacco securing the loan is sold, (2) delivery of the tobacco as directed by CCC. Producers shall deliver to a cooperative association designated by CCC a quantity of Flue-cured tobacco eligible for price support having a settlement value equal to the outstanding principal balance of the loan. Delivery shall be made during the week beginning immediately after the close of the 1978 auction marketing season.

(b) The association will advise producers of the time and place at which the tobacco is to be delivered in liquidation of farm storge loans. The association will also determine the settlement value of tobacco delivered on the basis of the grade and quality thereof as determined by the inspection service of the Agricultural Marketing Service, USDA.

§ 1421.424 Delivery charge.

Notwithstanding the provisions of § 1421.11 of the general regulations, there shall be no delivery charge on the tobacco delivered to the association.

§ 1421.425 Maturity of loans.

Farms storage loans on Flue-cured tobacco will mature on December 1, 1978, unless demand for repayment is made earlier.

Subpart—Loan and Purchase Program for 1985 and Subsequent Crops Wheat

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 105 B, 401, 95 Stat. 1221, 63 Stat. 1051, as amended (7 U.S.C. 1445b-1, 1421).

SOURCE: 47 FR 37875, Aug. 27, 1982, unless otherwise noted.

§ 1421.460 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1985 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1985 and subsequent crops of wheat.

[47 FR 37875, Aug. 27, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.461 Eligible wheat.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the wheat may be of any class except unclassed wheat, must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC); must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals; and must not contain two or more rodent pellets or comparable amounts of other excreta per 1,000 grams of wheat or one percent or more by weight of kernels visibly damaged by weevils or other insects.

(2) The wheat must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the wheat must also meet the following requirements:

(1) The wheat must grade No. 5 or better, except that the wheat may grade "Sample" on the factors of: (i) Test weight provided that the test weight is not less than 40 pounds per bushel, (ii) damaged kernels (total) with not more than 3 percent heat damage, (iii) foreign material, (iv) total defects with not more than 3 percent heat damage, or (v) any combination of paragraphs (b)(1) (i) through (iv) of this section.

(2) If of the class Mixed Wheat, the wheat must consist of mixtures of grades of eligible wheat as specified in paragraph (b)(1) of this section, provided such mixtures are the natural products of the field.

(3) The wheat may have the special grade designations "Garlicky," "Smutty," or both.

(4) The wheat must not grade "Ergoty" or "Treated."

(5) The wheat must not grade "Weevily" or have moisture over 13.5 percent unless the warehouse receipt representing the wheat is accompanied by a supplemental certificate which provides that the warehouseman shall deliver wheat which is not "Weevily," does not contain in excess of 13.5 percent moisture, and is otherwise of an eligible grade or quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.464(c).

§ 1421.462 Determination of quality.

(a) The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Wheat, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

(b) *Protein content determinations.* Producers may obtain official protein content determinations or protein content determinations arrived at by mutual agreement between the producer and the warehouseman with respect to the following: (i) wheat of the classes Hard Red Winter and Hard Red Spring to be placed under warehouse-stored loans or stored in approved warehouses for later purchase by CCC and (ii) wheat delivered from farm storage in satisfaction of a loan or for purchase by CCC. Producers may also obtain official protein determinations on wheat of such classes placed under farm-stored loans in accordance with paragraph (c) of this section. The cost of official protein content determinations shall not be for the account of CCC.

(c) *Protein determinations on farm-stored loan wheat.* If a producer at time of request for a farm-stored loan also requests that the premium for protein content be applied to the basic support rate for the classes of wheat specified in paragraph (b) of this section, the Agricultural Stabilization and Conservation Service will draw a representative sample of, and arrange for protein tests on, the wheat to be placed under loan. The premium applicable to the values determined by such tests shall be applied to the basic support rate at the time the loan is made.

However, settlement shall be based on the protein content determined upon delivery of the wheat to CCC. If a producer requests a protein premium on his farm-stored wheat to be placed under loan, a fee for the account of the producer will be charged for each bin of wheat tested for protein content.

§ 1421.463 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 60 pounds of wheat free of dockage.

(a) *In warehouse.* The quantity of wheat on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net bushels specified on the warehouse receipt or on the supplemental certificate, if applicable. If the wheat has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the wheat, when received, and 13.5 percent.

(b) *On farm.* The quantity of wheat eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by the weight of the wheat at the time of delivery to CCC.

§ 1421.464 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of wheat.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) subclass, (3) grade (including special grades), (4) test weight, (5) moisture content if above 13.5 percent, (6) dockage, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) protein content when applicable, (9) whether the wheat arrived by rail, truck, or barge, (10) the date the wheat was received or deposited in the warehouse, and (11) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the wheat grades "Weevily" or contains over 13.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.461(b)(5) in order for the wheat to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the wheat has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 13.5 percent and the wheat has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the wheat to a moisture of not over 13.5 percent which shall reflect a drying or blending shrink as specified in § 1421.463(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c)(1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the wheat represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called

"UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.466. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the wheat when CCC is holder of the warehouse receipt.

(e) *Freight certificate requirements.* Warehouse receipts representing wheat which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission (ICC), from a country shipping point to a normal trade channel market or to a storage point and stored intransit to a normal trade channel market, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the wheat and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS-KCCO) and shall be signed by the warehouseman.

§ 1421.465 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.466 Warehouse charges.

(a) *Storage charges.* The ASCS-KCCO approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan rate or purchase price in the case of wheat stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) Storage charges have been prepaid through the loan maturity date, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the wheat represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) *Storage start date.* The beginning date to be used for computing the storage deduction on wheat stored in warehouses operating under the UGSA shall be the later of the following: (1) The date the wheat was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.467 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible wheat which is not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC-614) indicating the approximate quantity of wheat the producer will sell to CCC.

§ 1421.468 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

(b) *Purchase agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

[47 FR 37875, Aug. 27, 1982, as amended at 50 FR 42511, Oct. 21, 1985]

§ 1421.469 Settlement.

Notwithstanding the provisions of § 1421.22, if the wheat delivered is of a quality which does not meet the sanitation requirements of § 1421.461(a), the wheat shall be sold for uses other than for human consumption and the settlement value shall be the same as the sale price. However, if CCC is unable to sell the wheat for such other uses, the settlement value shall be market value determined by CCC as of the date of delivery.

§ 1421.470 Support rates.

(a) *Basic county support rates.* Basic county support rates for wheat and the schedule of discounts shall be available in the county ASCS office for the applicable crop year. Except as provided in paragraphs (b) and (c) of this section, settlement of all loans and purchases described in this section shall be made in accordance with the provisions of § 1421.22.

(b) *Basic county support rates for farm-stored wheat.* The support rate used for disbursing farm-stored wheat loans shall be the applicable basic county support rate for the county where stored, adjusted only for the weed control discount where applicable. The settlement rate for wheat delivered in settlement of a farm-stored loan shall be the applicable basic county support rate adjusted in accordance with paragraph (c)(2) of this section.

(c) *Basic county support rates for warehouse-stored loans and purchases.* The support rate for warehouse-stored wheat loans and for wheat acquired by CCC through the purchase program shall be the applicable basic county support rate adjusted in accordance with: (1) The provisions of this section; and (2) the schedule of premiums and discounts which is available in the county ASCS office for the applicable crop year. Such premiums and discounts for wheat stored in or delivered to an approved warehouse shall be determined on the basis of quality factors set forth on warehouse receipts or supplemental certificates. The basis of all other premiums and discounts shall be determined by CCC. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not located in the same county. Such support rate shall be the highest support rate of the counties involved.

(d) *Basic county support rates for warehouse-stored wheat received by rail or utilizing combination barge-rail rates*—(1) *When shipped by rail.* The applicable basic support rates for warehouse-stored loans on wheat which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rates established for the county from which the wheat was shipped the following: (i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. If the wheat is destined to a normal trade channel market that would be used in commercial channels of trade but such wheat is stored in an approved warehouse resulting in additional costs because of out-of-line movement, such additional cost shall be deducted from the support rates as otherwise determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on wheat which is stored in an approved warehouse and which was shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic support rate established for the county from which the wheat was shipped the following: (i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. If the wheat is destined to a normal trade channel market that would be used in commercial channels of trade but such wheat is stored in an approved warehouse resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(e) *Basic county support rates for warehouse-stored wheat received by truck or nontariff barge.* (1) The basic county support rate for wheat delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the wheat is stored, adjusted for premiums and discounts as prescribed in paragraph (c) of this section.

(2) The basic county support rate for wheat delivered by truck by the producer to an in-line warehouse shall be the support rate for the county from which shipped, adjusted for applicable premiums and discounts as prescribed in paragraph (c) of this section plus the lesser of the actual truck freight charge or the truck freight charge computed in accordance with the following schedule for the distance by which the distance from the farm to the storing warehouse exceeds the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0 to 19	$.0.
20 to 50	$0.16 per bushel.
51 to 100 add	$0.0017 per bushel per mile.
101 to 125 add	$0.0009 per bushel per mile.
126 and over add	$0.0004 per bushel per mile.

(3) The basic county support rate for wheat delivered by the producer to a warehouse and shipped by truck to an in-line warehouse shall be the total of: (i) the support rate for the county in which the shipping warehouse is located: (ii) the lesser of the actual freight charge or the amount of the truck freight charge computed in accordance with the schedule shown in paragraph (e)(2) of this section for the distance between the shipping warehouse and the in-line warehouse; and (iii) truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic county support rate for wheat shipped by barge or truck-barge at a negotiated rate to an in-line warehouse shall be the total of: (i) The support rate for the county from where shipped; (ii) the lesser of the actual freight charge or the truck freight charge determined by applying the map mileage from the origin warehouse to the in-line warehouse to the schedule shown in paragraph (e)(2) of this section; and (iii) the origin warehouse truck receiving and load-out charges.

(f) *Storing responsibilities.* With respect to wheat received by rail or by combination barge-rail, the storing warehouseman shall be responsible for determining the normal trade channel market that would be used in commercial channels of trade. The storing warehouseman shall also execute supplemental certificates showing: (1) The rate of freight paid into the storage point; (2) the amount of penalty, if any, backhaul or out-of-line movement; (3) the applicable normal trade channel market that would be used in commercial channels of trade; and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

[47 FR 37875, Aug. 27, 1982, as amended by Amdt. 1, 49 FR 23601, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

§ 1421.471 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB number 0560-0087 has been assigned.

[Amdt. 1, 49 FR 23602, June 7, 1984; 49 FR 35745, Sept. 12, 1984]

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

SOURCE: 43 FR 17461, Apr. 25, 1978, unless otherwise noted.

§ 1421.530 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the reserve program which provides for the extension of farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") on eligible commodities listed in § 1421.531. Farm storage grain reserve loans will be evidenced by notes and secured by security agreements, grain reserve agreements, and in certain cases, chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and secured by the pledge of warehouse receipts representing an eligible commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the grain reserve program a producer must request a grain reserve loan and enter into a grain reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.531. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time the commodity is eligible to earn storage payments. Producers may redeem commodities under the grain reserve program without repaying earned storage when the national average market price reaches the release level, as determined pursuant to § 1421.543. All wheat loans in the grain reserve and all loans on any feed grain in the reserve will be called when the national average market price of such wheat or feed grain reaches the call level; as determined pursuant to § 1421.543.

§ 1421.531 Eligible commodities and length of loans.

(a) *Eligible commodities.* All eligible 1976 and 1977-crops barley, corn, oats, sorghum, and wheat, and 1978-crop corn are eligible for grain reserve loans in accordance with § 1421.532.

(b) *Length of reserve loans.* Loans shall be for a period of three years.

[43 FR 17461, Apr. 25, 1978, as amended by 43 FR 55741, Nov. 29, 1978]

§ 1421.532 Reserve quantities.

The Secretary will announce the quantity of wheat or feed grains he determines should be stored under this program to promote the orderly marketing of each commodity as far in advance of making loans as practicable. The Secretary may thereafter adjust such quantities in the event he finds that such adjustments are necessary in order to achieve orderly marketing. The quantity of wheat will not be less than 300,000,000 nor more than 700,000,000 bushels, except that such maximum quantity may be adjusted by the Secretary pursuant to an international agreement containing provisions relating to grain reserves. Notice of all such determinations will be published in the FEDERAL REGISTER.

[43 FR 55741, Nov. 29, 1978]

§ 1421.533 Program availability.

Producers with farm or warehouse stored, 1976 or 1977 crop wheat or feed grain and 1978-crop corn loans (hereinafter called "regular loan(s)") may participate in the grain reserve program. A producer desiring to participate in the Grain Reserve Program shall file a request to participate not later than the regular loan maturity date for the grain the producer wishes to place in the program. The producer shall request the grain reserve loan at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

[43 FR 55741, Nov. 29, 1978]

§ 1421.534 Eligibility requirements.

(a) *Producer.* A producer shall be eligible to participate in this program if such producer has an eligible commodity under a regular loan or has an eligible commodity under a purchase agreement which is converted into a regular loan.

(b) *Commodities.* Eligibility of producers to place wheat and feed grains into the reserve program will be on a first come, first serve basis. After the quantities established pursuant to § 1421.532 have been accomplished, the program will be suspended to new applicants.

[43 FR 17461, Apr. 25, 1978, as amended at 43 FR 55741, Nov. 29, 1978; 44 FR 10357, Feb. 22, 1979]

§ 1421.535 Applicability of the general regulations governing price support for the 1976 and subsequent crops.

Provisions of the General Regulations Covering Price Support for the 1976 and Subsequent Crops, published at 41 FR 22334 and any amendments thereto (hereinafter referred to as "General Regulations") which are not inconsistent with provisions of this subpart shall apply to grain reserve loans.

§ 1421.536 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the General Regulations, and the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC. All receipts must be registered or recorded with appropriate State or local officials when required by State law. Warehouse receipts must show that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(c) *Where a warehouseperson is also owner.* If the receipt is issued for a commodity which is owned by the ware- houseperson, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseperson on their own commodity is invalid, the warehouseperson may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.537 Quantity eligible for grain reserve loans.

(a) *Farm stored.* The quantity eligible for grain reserve loan shall be the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse stored.* The quantity eligible for grain reserve loan shall be the quantity shown on the warehouse receipt or supplemental certificate, if applicable, which secured the regular loan.

§ 1421.538 Quality of farm stored grain.

Prior to approval of a grain reserve farm stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan.

§ 1421.539 Storage rates.

Producers will be paid per annum storage payments at the initial rate of 25 cents per bushel for wheat, barley and corn, 19 cents per bushel for oats, and 44.64 cents per hundredweight for sorghum. Such rates may be changed from time to time by announcement in a separate notice published in the FEDERAL REGISTER but will not be less than (1) 25 cents per bushel for wheat, barley, and corn, (2) 44.64 cents per hundredweight for sorghum, and (3) 19 cents per bushel for oats. When storage is computed for less than one year, appropriate daily rates announced in the FEDERAL REGISTER will be used, which will not be less than (1) .0685 cents per bushel for wheat, barley, and corn, (2) .1223 cents per hundredweight for sorghum, and (3) .0521 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.540.

§ 1421.540 Storage payments.

(a) *Time.* Storage payments shall be paid annually in advance on the date the grain reserve agreement is approved and each anniversary date thereafter if the market price on such date is below the release level. If the market price is equal to or exceeds the release level on the date the grain reserve agreement is approved or on the anniversary date, no storage payment will be made at that time. If CCC subsequently announces that the market price is again below the release level, a storage payment will be made for the balance of the year. Second or third year storage payments will not be made to producers having grain reserve warehouse loans until the producers furnish written evidence that at least the next year's storage payment has been paid or provided for. If the producer fails to provide such written evidence within a reasonable period of time, the county office shall call such loan, and if the loan is not repaid according to § 1421.543 or evidence that storage has been paid is not furnished within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.543(b).

(b) Storage payments for farm stored grain reserve loans shall be based on the regular loan quantity, except that such payments can be based on the quantity measured for reserve loan when such measured quantity is more than the regular loan quantity.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. However, notwithstanding the above exception and similar provisions of paragraph 2 of the Farm Storage Grain Reserve Agreement (Form CCC-701) and the Warehouse Storage Grain Reserve Agreement (Form CCC-700), storage credits will continue to be earned by farmers if their States' mid-month average price received by farmers where the crop is stored (as announced by the Economics, Statistics, and Cooperatives Service) is less than such State's average loan level, plus the difference between the national average loan rate and the release level. Any unearned storage will be subtracted from any future storage payments or will be collected when the loan is redeemed or forfeited to CCC.

(e) *Unearned storage.* No storage payment shall be earned if the producer (1) has made any false representation in the loan documents in obtaining the loan or in settlement of the loan, (2) makes an unauthorized disposition of the commodity with intent to defraud CCC, (3) abandons the commodity, or (4) negligently or otherwise impairs the commodity.

[43 FR 17461, Apr. 25, 1978, as amended at 43 FR 55742, Nov. 29, 1978; 44 FR 10357, Feb. 22, 1979]

§ 1421.541 Interest.

Each grain reserve loan shall bear interest during the first year at the rate of 6 percent per annum or such lower rate as may be later announced in a separate notice(s) published in the FEDERAL REGISTER. Loans shall bear interest at such lower rates from the effective dates of such announcements. The loan shall not bear interest thereafter.

§ 1421.542 Commingling and replacement of grain.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may, with prior written approval of the county committee, be commingled with other eligible or ineligible grain from the same or any other crop year and of the same class if (1) the county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain prior to commingling at the producer's expense.

(b) *Replacement.* Grain in the reserve may, with prior written approval of the county committee, be replaced with other grain of the same class produced by the borrower if (1) the county committee gives prior written approval of such replacement, (2) the grain to be used for replacement is in storage on the farm, unless the county committee authorizes removal of the reserve grain to licensed storage before replacement according to § 1421.542(c), (3) the county committee inspects and measures the grain replacing the reserve grain at the producer's expense before removal of the reserve grain, and (4) the county committee determines that the grain to be used for replacement is of a quality equal to or better than the grain in storage in the grain reserve program. Removal of farm stored grain in the grain reserve program without prior written approval will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move the grain in the grain reserve program to licensed warehouse storage before replacement if, (1) prior to the movement of grain, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, and (4) the grain is moved to licensed storage within 30 days after approval is granted and an endorsed negotiable warehouse receipt is deposited in escrow with the county executive director. The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and the United States in no way shall be liable for such charges. Whenever the grain to replace the grain covered by the warehouse receipt held in escrow is in the farm storage and the county office has determined by inspection and measurement that there is sufficient quantity in storage and the quality is equal to or better than the grain represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place grain in acceptable farm storage as provided herein prior to maturity of the grain reserve agreement, the producer's interest in the grain represented by the warehouse receipt, held in escrow by the County Executive Director, shall transfer to Commodity Credit Corporation.

§ 1421.543 Release levels, redemption, requirements, and early redemption charges.

(a) *General.* Commodities under grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is at least 140 percent of the current national average loan rate in the case of wheat and 125 percent of the current national average loan rate in the case of feed grains (hereinafter called the release level). The national average market price for each feed grain (corn, oats, sorghum, and barley) will be considered by CCC to have reached 125 percent of the national average loan rate for the respective feed grain when (1) the average mid-month price received by farmers as reported by Economic Statistics and Cooperative Service in Agricultural Prices was 130 percent or more of the national average loan rate for the respective feed grain, or (2) such mid-month price was at least 125 percent but less than 130 percent of the national average loan rate for the respective feed grain and the trend of feed grain prices reported by Agricultural Marketing Service at major feed grain markets for the last ten market days in a month indicates release should be authorized, or (3) the five-day average price for the respective feed grain at major markets published by Agricultural Marketing Service adjusted to reflect prices received by farmers for the respective feed grain by the difference between the mid-month prices published by Economic Statistics and Cooperative Service for the respective feed grain for the previous month and the average mid-month price at major markets for the respective feed grain published by Agricultural Marketing

Service and such adjusted price equals or exceeds 125 percent of the national average loan rate for the respective feed grain unless the trend in such prices is downward and CCC determines that release should not be authorized. The national average market price for wheat will be considered to have reached 140 percent of the national average loan rate for wheat when (i) the average mid-month price received by farmers as reported by Economic Statistics and Cooperative Service in Agricultural Prices was 145 percent or more of the national average loan rate for wheat, or (ii) such mid-month price was at least 140 percent but less than 145 percent of the national average loan rate for wheat and the trend of wheat prices reported by Agricultural Marketing Service at major wheat markets for the last ten market days in a month indicates release should be authorized, or (iii) the five-day average price for wheat at major markets published by Agricultural Marketing Service adjusted, to reflect prices received by farmers for wheat, by the difference between the mid-month prices published by Economic Statistics and Cooperative Service for wheat for the previous month and the average mid-month price at major markets for wheat published by Agricultural Marketing Service and such adjusted price equals or exceeds 140 percent of the national average loan rate unless the trend in such prices is downward and CCC determines that release should not be authorized. Producers will be advised when the market reaches this level for any such commodity and that their loans are eligible for redemption without an early redemption charge. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. If a subsequent announcement shows that the market price is below the applicable release level, the commodity will revert to the original agreement and will not be eligible for redemption without an early redemption charge.

(b) *Redemption or voluntary forfeiture of commodity below release levels.* (1) Conditions other than emergency release. Except as provided in paragraph (b)(2) of this section if a producer redeems the commodity prior to CCC announcing that the release level has been met, such producer will be required to repay as liquidated damages the higher of the loan principal, plus interest, plus all storage payments, plus interest or 140 percent of the producer's then current loan rate in case of wheat or 125 percent of the producer's then current loan rate in case of feed grains. If a producer voluntarily forfeits the commodity prior to CCC announcing that the release level has been met, such producer shall be required to repay all storage, plus interest and, as liquidated damages, the difference between the amount which would otherwise be due on the loan if redeemed at such time and 140 percent in case of wheat or 125 percent in case of feed grain of the producer's then current loan rate.

(2) *Emergency release.* In case of warehouse loans, if it is determined by CCC that storage space is no longer available and approved in-line storage for wheat, sorghum, and barley cannot be found, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm storage loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

(c) Redemption of commodity when the national average market price is at least 175 percent for wheat or 140 percent for feed grain of national average loan rate.

(1) When CCC determines that the national average market price is at or above 175 percent of the national average loan rate for wheat or 140 percent of the national average loan rate for feed grains, for five consecutive market days, the loan shall be called. Such call will be determined in the same manner as prescribed for release

levels in § 1421.543(a). If the loan is not redeemed within 90 days after notification, CCC may take title to the commodity.

(2) Notwithstanding any provision of this subpart, with respect to loans called under paragraph (c)(1) of this section, the Secretary may provide producers the options of—

(i) Delaying their date for settlement of such loans for a period of 30 days and such additional 30-day periods as determined necessary by the Secretary in areas where the Secretary determines conditions exist which disrupt orderly marketing of the commodity under loan and (ii) reentering the loan into the reserve loan program under all the original terms and conditions, if subsequent to such loan call the national average market price of the loan commodity falls below the release level applicable to the loan commodity.

[43 FR 17461, Apr. 25, 1978, as amended at 43 FR 55742, Nov. 29, 1978; 45 FR 60407, Sept. 12, 1980; 45 FR 71352, Oct. 28, 1980]

§ 1421.544 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the earlier of (a) the regular loan matured, or (b) the last day of the 36th month following the month in which the grain reserve agreement is approved.

Subpart—Regulations Governing the Rice Reserve Program for the 1976 and Subsequent Crops

SOURCE: 43 FR 47972, Oct. 18, 1978, unless otherwise noted.

§ 1421.558 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the reserve program which provides for the extension of farm storage and warehouse storage loans (hereinafter called "rice reserve loan(s)") on rice described in § 1421.559. Farm storage rice reserve loans will be evidenced by notes and secured by security agreements, rice reserve agreements, and in certain cases, chattel mortgages, or financing statements. Warehouse storage rice reserve loans will be evidenced by notes, security agreements, and rice reserve agreements and secured by the pledge of warehouse receipts representing rice in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the rice reserve program, a producer must request a rice reserve loan and enter into a rice reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.559. Storage payments will be paid to the producer annually during the period of the rice reserve agreement for the time the commodity is eligible to earn storage payments. Producers may redeem their commodity under the rice reserve program without repaying earned storage when the national average market price reaches the release level, as determined pursuant to § 1421.571. All rice loans in the rice reserve will be called when the national average market price of such rice reaches the call level, as determined pursuant to § 1421.571.

§ 1421.559 Eligible commodities and length of loans.

(a) *Eligible commodities.* All eligible 1978 crop rice under regular loan is eligible for rice reserve loans in accordance with § 1421.560.

(b) *Length of reserve loans.* Rice reserve loans shall be for a period of 3 years.

§ 1421.560 Limit on reserve quantity.

The total amount of rice under rice reserve program shall not exceed 8.0 million hundredweight.

§ 1421.561 Program availability.

Producers with farm or warehouse stored 1978 rice under CCC loan (hereinafter called "regular loan(s)") may participate in the rice reserve program. A producer desiring to participate in the rice reserve program shall file a request to participate not later than the maturity date of the regular loan for the rice such producer wishes to place in the program. The producer shall request such rice reserve loan at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a rice reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.562 Eligibility requirements.

(a) *Producer.* A producer shall be eligible to participate in this program if such producer has eligible rice under a regular loan or has eligible rice under a purchase agreement which is converted into a regular loan.

(b) *Limits.* Eligibility of producers to place rice into the rice reserve program will be on a first-come-first-served basis. After the limits established in § 1421.560 have been accomplished, the program will be closed to new applicants.

§ 1421.563 Applicability of the general regulations governing price support for the 1976 and subsequent crops.

Provisions of the General Regulations Governing Price Support for the 1976 and Subsequent Crops, published at 41 FR 22334 and any amendments thereto (hereinafter referred to as "General Regulations") which are not inconsistent with provisions of this subpart shall apply to rice reserve loans.

§ 1421.564 Warehouse receipts.

(a) *General.* Warehouse receipts representing rice on which producers desire reserve loans under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the general regulations, and the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and may represent rice which is deemed to be stored commingled, modified commingled, or identity preserved. The receipts must be negotiable and must cover the eligible rice actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible rice was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC. All receipts must be registered or recorded with appropriate State or local officials when required by State law. Warehouse receipts must show that storage charges have been paid or otherwise provided for through the end of the first year of the rice reserve agreement.

(c) *Where a warehouseperson is also owner.* If the receipt is issued for rice which is owned by the warehouseperson, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousepersons on their own commodity is invalid, the warehouseperson may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.565 Quantity eligible for rice reserve loans.

(a) *Farm stored.* The quantity eligible for rice reserve loan shall be the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse stored.* The quantity eligible for rice reserve loan shall be the quantity shown on the warehouse receipt or supplemental certificate, if applicable, which secured the regular loan.

§ 1421.566 Quality of farm stored rice.

Prior to approval of a rice reserve farm stored loan, the commodity will be inspected by a representative of the county agricultural stabilization and conservation (ASC) committee and a farm storage rice reserve agreement will not be approved by CCC unless it is determined on the basis of such inspection that the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan.

§ 1421.567 Storage rates.

Producers will be paid per annum storage payments at the initial rate of 85 cents per hundredweight for rice. Such rates may be changed from time to time by announcement in a separate notice published in the FEDERAL REGISTER but will not be less than 85 cents per hundredweight for rice. When storage is computed for less than 1 year, appropriate daily rates announced in the FEDERAL REGISTER will be used, which will not be less than 0.2329 cent per hundredweight for rice. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.568.

§ 1421.568 Storage payments.

(a) *Time.* Storage payments shall be paid annually in advance on the date the rice reserve agreement is approved and each anniversary date of the agreement thereafter if the market price on such date is below the release level. If the market price is equal to or exceeds the release level on the date the rice reserve agreement is approved or on the anniversary date, no storage payment will be made at that time. If CCC subsequently announces that the market price is again below the release level, a storage payment will be made for the balance of the year. Second or third year storage payments will not be made to producers having rice reserve warehouse loans until the producers furnish written evidence that at least the next year's storage payment has been paid or provided for. If the producer fails to provide such written evidence within a reasonable period of time, the county office shall call such loan, and if the loan is not repaid according to § 1421.571 or evidence that storage has been paid is not furnished within 10 days after such call, title to the commodity shall vest in CCC on the 11th day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.571(b).

(b) Storage payments for farm stored rice reserve loans shall be based on the regular loan quantity except that such payments can be based on the quantity measured for a reserve loan when such measured quantity is more than the regular loan.

(c) *Storage credit.* Storage credit for less than 1 year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. However, notwithstanding the above exception, storage credits will continue to be earned by farmers if their States' mid-month average price received by farmers where the crop is stored (as announced by the Economics, Statistics, and Cooperatives Service) is less than such State's average loan level, plus the difference between the national average loan rate and the release level. Any unearned storage will be subtracted from any future storage payments or will be collected when the loan is redeemend or forfeited to CCC.

(e) *Unearned storage.* No storage payment shall be earned if the producer:

(1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan, (2) makes an unauthorized disposition of the commodity with intent to defraud CCC, (3) abandons the commodity, or (4) negligently or otherwise impairs the commodity.

§ 1421.569 Interest.

Each rice reserve loan shall bear interest through the first year of the reserve agreement at the rate of 7 percent per annum or such lower rate as may be later announced in a separate notice(s) published in the FEDERAL REGISTER. Loans shall bear interest at such lower rates from the effective dates of such announcements. The loan shall not bear interest thereafter.

§ 1421.570 Commingling and replacement of rice.

(a) *Commingling.* In the case of farm storage, rice may, with prior written approval of the county ASC committee, be commingled with other eligible or ineligible rice from the same or any other crop year and of the same class if: (1) The county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the rice prior to commingling at the producer's expense.

(b) *Replacement.* Rice may, with prior written approval of the county committee, be replaced with other rice of the same class produced by the borrower if:

(1) The county committee gives prior written approval of such replacement, (2) the rice to be used for replacement is in storage on the farm, unless the county committee authorizes removal of the reserve rice to licensed storage before replacement according to § 1421.570(c), (3) the county committee inspects and measures the rice replacing the reserve rice at the producer's expense before removal of the reserve rice, and (4) the county committee determines that the rice to be used for replacement is of a quality equal to or better than the rice in storage in the rice reserve program. Removal of farm stored rice in the rice reserve program without prior written approval will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move the rice in the rice reserve program to licensed warehouse storage before replacement if:

(1) Prior to the movement of rice, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the rice at the producer's expense prior to removal, and (4) within 30 days after approval is granted the rice is moved to licensed storage and an endorsed negotiable warehouse receipt is deposited in escrow with the county executive director. The producer shall agree to remain liable for all charges incident to the storage of the rice in the warehouse and the United States in no way shall be liable for such charges. Whenever the rice to replace the rice covered by the warehouse receipt held in escrow is in the farm storage and the county office has determined by inspection and measurement that there is sufficient quantity in storage and the loan value is equal to or more than the rice represented on the reserve agreement, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place rice in acceptable farm storage as provided herein prior to maturity of the rice reserve agreement, the producer's interest in the rice represented by the warehouse receipt, held in escrow by the county executive director, shall transfer to Commodity Credit Corporation.

§ 1421.571 Release levels, redemption, requirements, and early redemption charges.

(a) *General.* Rice under reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is at least 140 percent of the current national average loan rate for rice (hereinafter called the release level). The national average market price for rice will be considered to have reached 140 percent of the national average loan rate when:

(1) The average midmonth price received by farmers as reported by Economics, Statistics, and Cooperatives Service in Agricultural Prices was 140 percent or more of the national average loan rate for rice. Producers will be advised when the market reaches this level for rice and that their loans are eligible for redemption without an early redemption charge. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. If a subsequent announcement shows that the market price is below the applicable release level, the commodity will revert to the original agreement and will not be eligible for redemption without an early redemption charge.

(b) *Redemption or voluntary forfeiture of commodity below release levels.* (1) Conditions other than emergency release. Except as provided in paragraph (b)(2) of this section if a producer redeems the commodity prior to CCC announcing that the release level has been met, such producer will be required to repay as liquidated damages the higher of the loan principal, plus interest, plus all storage payments, plus interest or 140 percent of the producer's then current loan rate for rice. If a producer voluntarily forfeits the commodity prior to CCC announcing that the release level has been met, such producer shall be required to repay all storage, plus interest and, as liquidated damages, the difference between the amount which would otherwise be due on the loan if redeemed at such time and 140 percent of the producer's then current loan rate for rice.

(2) *Emergency release.* In case of warehouse loans, if it is determined by CCC that storage space is no longer available, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farms storage loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, or there is damage to the structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

(c) *Redemption of commodity when market price for rice is at least 160 percent for rice of national average loan rate.* When CCC determines that the market price for rice is at least 160 percent of the national average loan rate, the loan shall be called. Such call will be determined in the same manner as prescribed for release levels in § 1421.571(a). If the loan is not redeemed within 30 days after notification, CCC may take title to the commodity.

§ 1421.572 Maturity.

Rice reserve loans mature and are due and payable on the earlier of: (a) The last day of the 36th calendar month after the regular loan matured, or (b) the last day of the 36th month following the month in which the rice reserve agreement is approved.

Subpart—Regulations Governing the Grain Reserve Program for 1979 and Subsequent Crops and Alternative Program for 1979 and Prior Crops

SOURCE: 45 FR 3024, Jan. 16, 1980, unless otherwise noted.

§ 1421.630 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the reserve program which provides for the extension of farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") on eligible commodities as provided in § 1421.631. Farm storage grain reserve loans will be evidenced by notes and secured by security agreements, grain reserve agreements, and in certain cases, chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and secured by the pledge of warehouse receipts representing an eligible commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the grain reserve program a producer must request and enter into a grain reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.631. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time the commodity is eligible to earn storage payments. Producers may redeem commodities under the Grain Reserve Program without repaying earned storage when the national average market price reaches the release level, as determined pursuant to § 1421.643. All wheat loans in the grain reserve and all loans on any feed grain in the reserve will be called when the national average market price of such wheat or feed grain reaches the call level pursuant to § 1421.643.

§ 1421.631 Eligible commodities and length of loans.

(a) *Eligible commodities.* Subject to such limitations on quantity as may be provided in accordance with § 1421.632, wheat and feed grains shall be eligible for the grain reserve, when such commodities are in abundant supply as determined by the Secretary, and announced and published in the FEDERAL REGISTER.

(b) *Length of reserve agreements.* Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.632 Limit on reserve quantity.

The Secretary will announce the quantity of wheat or feed grains he determines should be stored under this program to promote the orderly marketing of each commodity as far in advance of making loans as practicable. The Secretary may thereafter adjust such quantities in the event he finds that such adjustments are necessary in order to achieve orderly marketing. The quantity of wheat will not be less than 300,000,000 nor more than 700,000,000 bushels, except that such maximum quantity may be adjusted by the Secretary pursuant to an international agreement containing provisions relating to grain reserves. Notice of all such determinations will be published in the FEDERAL REGISTER.

§ 1421.633 Program availability.

Producers with farm or warehouse-stored wheat or feed grain under loan (hereinafter called "regular loan(s)") may participate in the Grain Reserve Program anytime the program is available for their commodity pursuant to § 1421.631(a). A producer desiring to participate in the Grain Reserve Program shall file a request to participate anytime during a period of time the program is open to applicants. Such period of time will be announced in the FEDERAL REGISTER. The producer shall request the grain reserve loan at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.634 Eligibility requirements.

(a) *Producer.* A Producer shall be eligible to participate in this program if such producer has an eligible commodity under a regular loan or has an eligible commodity under a purchase agreement which is converted into a regular loan.

(b) *Commodities.* Eligibility of producers to place designated wheat and feed grains into the reserve program will be on a first come, first served basis. After the quantities established pursuant to § 1421.632 have been accomplished, the program will be suspended to new applicants.

§ 1421.635 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

Provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353 and corrected at 44 FR 6351 and any amendments thereto (hereinafter referred to as "General Regulations") which are not inconsistent with provisions of this subpart shall apply to grain reserve loans.

§ 1421.636 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the General Regulations, and the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC. All receipts must be registered or recorded with appropriate State or local officials when required by State law. The producer must provide evidence that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(c) *Where a warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on their own commodity is invalid, the warehouseman may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.637 Quantity eligible for grain reserve loans.

(a) *Farm-stored.* The quantity eligible for grain reserve loan shall be the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for grain reserve loan shall be the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.638 Quality of farm-stored grain.

Prior to approval of a grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan.

§ 1421.639 Storage rates.

Producers will be paid per annum storage payments at the initial rate of 26½ cents per bushel for wheat, barley and corn, 20 cents per bushel for oats, and 47.32 cents per hundredweight for sorghum. Such rates may be changed from time to time by announcement in a separate notice published in the FEDERAL REGISTER but will not be less than (a) 26½ cents per bushel for wheat, barley, and corn, (b) 47.32 cents per hundredweight for sorghum, and (c) 20 cents per bushel for oats. When storage is computed for less than one year, appropriate daily rates announced in the FEDERAL REGISTER will be used, which will not be less than (1) .0726 cents per bushel for wheat, barley, and corn, (2) .1296 cents per hundredweight for sorghum, and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.640.

§ 1421.640 Storage payments.

(a) *Time.* Storage payments shall be paid annually in advance on the date the grain reserve agreement is approved and each anniversary date thereafter, except storage payments will not be made in any State when storage earning has been stopped according to § 1421.640(d) in the State where the grain is stored. If CCC subsequently determines that the price in the State where the grain is stored has dropped below the release level, storage payments will be made for the balance of the year. Second or third year storage payments will not be made to producers having grain reserve warehouse loans until the producers furnish written evidence that at least the next year's storage payment has been paid to the warehouseman or provided for with the warehouseman. If the producer fails to provide such written evidence within a reasonable period of time, the county office shall call such loan, and if the loan is not repaid or evidence that storage has been paid is not furnished, within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.643(d).

(b) *Storage payment units.* Storage payments for farm-stored grain reserve loans shall be based on the regular loan quantity, transferred to the reserve, except that such payments can be based on the quantity measured for reserve loan when such measured quantity is more than the regular loan quantity.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. However, notwithstanding the above exception, storage credits will continue to be earned by farmers if their State's mid/month average price received by farmers where the crop is stored (as announced by the Economics, Statistics, and Cooperatives Service) is less than such State's average loan level, plus the difference between the national average loan rate and the release level. Any unearned storage will be subtracted from any future storage payments or will be collected when the loan is redeemed or forfeited to CCC.

(e) *Unearned storage.* No storage payment shall be earned if the producer (1) has made any false representation in the loan documents in obtaining the loan or in settlement of the loan, (2) makes an unauthorized disposition of the commodity with intent to defraud CCC, (3) abandons the commodity, or (4) negligently or otherwise impairs the commodity.

[45 FR 3024, Jan. 16, 1980, as amended at 45 FR 20460, Mar. 28, 1980]

§ 1421.641 Interest.

(a) Each grain reserve loan shall bear interest during the first year of the grain reserve agreement at the rate recorded on the regular loan document or such lower rate as may be later announced in a separate notice(s) published in the FEDERAL REGISTER. However, such interest will be waived on the first 512 million bushels of corn which enter the new Grain Reserve Program, *Provided, however,* that 1979-crop corn placed in the reserve by producers who did not comply with the set-aside and normal crop acreage requirements for 1979 crops shall not be eligible for the waiver of interest during the first year of the reserve period. For corn which was entered into the previous reserve program after October 22, 1979, and which is entered into the new Grain Reserve Program by the producer executing a new grain reserve agreement on or before March 31, 1980, the interest waiver will be effective the latter of January 7, 1980, or the date the previous grain reserve agreement was approved.

(b) The loans shall not bear interest after the first year.

[45 FR 3024, Jan. 16, 1980, as amended at 45 FR 26309, Apr. 17, 1980]

§ 1421.642 Commingling and replacement of grain.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may, with prior written approval of the county committee, be commingled with other eligible or ineligible grain from the same or any other crop year and of the same class if (1) the county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain prior to commingling at the producer's expense.

(b) *Replacement.* Grain in the reserve may, with prior written approval of the county committee, be replaced with other grain of the same kind and equal value produced by the borrower if (1) the county committee gives prior written approval of such replacement, (2) the grain to be used for replacement is in storage on the farm or the county committee has authorized removal of the reserve grain to licensed storage before replacement according to § 1421.642(c), (3) the county committee inspects and measures the grain replacing the reserve grain at the producer's expense before removal of the reserve grain, and (4) the county committee determines that the grain to be used for replacement is of a quality equal to or better than the grain in storage in the grain reserve program. Removal of farm-stored grain in the grain reserve program without prior written approval will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move the grain in the Grain Reserve Program to licensed warehouse storage before replacement if, (1) prior to the movement of grain, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, and (4) the grain is moved to licensed storage within 30 days after approval is granted and an endorsed negotiable warehouse receipt is deposited in escrow with the county executive director. The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and the United States in no way shall be liable for such charges. Whenever the grain which is used to replace the grain covered by the warehouse receipt held in escrow is in farm storage and the county office has determined by inspection and measurement that there is sufficient quantity in storage and the quality is equal to or better than the grain represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place grain in acceptable farm storage as provided herein prior to maturity of the grain reserve agreement, the producer's interest in the grain represented by the warehouse receipt, held in escrow by the County Executive Director, shall transfer to Commodity Credit Corporation.

(d) *Release for sale or livestock feed.* The producer may be authorized to move farm-stored grain in the Grain Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if, (1) prior to the movement of the grain, a written request to do so if filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, (4) the grain released for livestock feed will be fed to the producer's own livestock, and (5) an inspection, at the producer's expense, of the unharvested crops indicates there will be sufficient eligible unencumbered production of equal or better quality to replace the reserve commodity.

§ 1421.643 Release levels, redemption requirements, and early redemption charges.

(a) *General.* Commodities under grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is at least 150 percent of the then current national average loan rate in the case of wheat and 125 percent of the then current national average loan rate in the case of feed grains (hereinafter called the release level). The national average market price for each commodity will be considered by CCC to have reached the release level, when the five-day national average price for the respective commodity at major markets published by the Agricultural Marketing Service, adjusted downward to reflect prices received by farmers by the difference between (1) the mid-month prices published by the Economics, Statistics and Cooperatives Service for the respective commodity for the previous month, and (2) the average mid-month price for the same month at major markets published by the Agricultural Marketing Service, equals or exceeds the release level for the respective commodity. The national average price for barley will be considered by CCC to have reached the release level when the five-day average price for barley published by the Agricultural Marketing Service for the major market which serves the area where the majority of the barley in the reserve is stored, adjusted downward to reflect prices received by farmers by the difference between (i) the mid-month price published by the Economics, Statistics and Cooperatives Service for feed barley for the previous month in the area where the majority of the barley in the reserve is stored, and (ii) the average mid-month price for barley published by the Agricultural Marketing Service for the same month at the major market which serves the area where the majority of the barley in the reserve is stored, equals or exceeds the release level for barley. However, if CCC determines that the trend in such wheat or feed grains (including barley) prices is downward, release may not be authorized. Producers will be advised when the market reaches this level for any such commodity and that their loans are eligible for redemption without an early redemption charge. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Subsequent announcements to continue release will be for the month following the preceding release period. If a subsequent announcement shows that the market price is below the applicable release level, the terms of the reserve agreement and the regulations which are applicable to the commodity prior to release shall again apply, and the commodity will not be eligible for redemption without an early redemption charge.

(b) *Call level.* The national average market price shall be determined to be at the call level when the national average market price is at least 185 percent of the then current national average loan rate for wheat or 145 percent of the then current national average loan rate for feed grains.

(1) CCC will determine that the national average market price is at call level and will call the loans when the moving average AMS market price as determined in the same manner as prescribed for release levels in § 1421.643(a) is at or above such level for five consecutive market days: *Provided, however,* That if on any one of the five consecutive market days the one-day national average market price adjusted downward by the difference between the mid-month ESCS price and the mid-month AMS price as determined in accordance with § 1421.643(a) falls below the call level, the Secretary may determine that the commodity loans will not be called. If a commodity loan is called and the loan is not redeemed within 90 days after notification, CCC may take title to the commodity.

(2) Notwithstanding any provision of this subpart, with respect to loans called under paragraph (b)(1) of this section, the Secretary may provide producers the options of (i) delaying their date for settlement of such loans for a period of 30 days and such additional 30-day periods as determined necessary by the Secretary in areas where the Secretary determines conditions exist which disrupt orderly marketing of the commodity under loan, and (ii) re-entering the loan into the reserve loan program under all the original terms and conditions if subsequent to such loan call the national average market price of the loan commodity falls below the release level applicable to the loan commodity.

(c) *Redemption or voluntary forfeiture.* Redemption or voluntary forfeiture of a commodity when the national average market price for the commodity is below the release level.

(1) For conditions other than emergency release as provided in paragraph (c)(2), if a producer redeems the commodity prior to CCC announcing that the release level has been reached, such producer will be required to repay as liquidated damages, the higher of the loan principal, plus interest, plus all storage payments, plus interest, or 150 percent of the producer's then current loan rate in the case of wheat or 125 percent of the producer's then current loan rate in the case of feed grains. If a producer voluntarily forfeits the commodity prior to CCC announcing that the release level has been reached, such producer shall be required to repay all storage, payments, plus interest and, as liquidated damages, the difference between the

amount which would otherwise be due on the loan if redeemed at such time and 150 percent in the case of wheat or 125 percent in the case of feed grains of the producer's then current loan rate.

(2) *Emergency release.* In the case of warehouse-stored loans, if it is determined by CCC that storage space is no longer available and approved in-line storage for wheat, sorghum and barley cannot be found, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

[45 FR 3024, Jan. 16, 1980, as amended at 45 FR 35801, May 28, 1980; 45 FR 81534, Dec. 11, 1980]

§ 1421.644 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of (a) the day the regular loan matured, or (b) the last day of the 36th month following the month in which the grain reserve agreement is approved, except, when the grain reserve loan is an extension of an unmatured regular loan, the grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

[45 FR 20461, Mar. 28, 1980]

Subpart—Regulations Governing the Grain Reserve Program for 1980 and Subsequent Crops and Alternative Program for 1980 and Prior Crops

Source: 45 FR 53802, Aug. 13, 1980, unless otherwise noted.

§ 1421.670 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the reserve program which provides for the extension of farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") on eligible commodities as provided in § 1421.671. Farm storage grain reserve loans will be evidenced by notes and secured by security agreements, grain reserve agreements, and in certain cases, chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and secured by the pledge of warehouse receipts representing an eligible commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the grain reserve program a producer must request and enter into a grain reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.671. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time the commodity is eligible to earn storage payments. Producers may redeem commodities under the Grain Reserve Program without repaying earned storage when the national average market price reaches the release level, as determined pursuant to § 1421.683. All wheat loans in the grain reserve and all loans on any feed grain in the reserve will be called when the national average market price of such wheat or feed grain reaches the call level pursuant to § 1421.683.

§ 1421.671 Eligible commodities and length of loans.

(a) *Eligible commodities.* Subject to such limitations on quantity as may be provided in accordance with § 1421.672, wheat and feed grain shall be eligible for the grain reserve.

(b) *Length of reserve agreements.* Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.672 Limit on reserve quantity.

An unlimited quantity of feed grains may be stored under this program. The quantity of wheat will not be less than 300,000,000 nor more than 700,000,000 bushels, except that such maximum quantity may be adjusted by the Secretary pursuant to an international agreement containing provisions relating to grain reserves. Notice of such adjustments will be published in the FEDERAL REGISTER.

§ 1421.673 Program availability.

Producers with farm or warehouse-stored wheat or feed grain under CCC loan (hereinafter called "regular loan(s)") may participate in the Grain Reserve Program anytime a reserve is in effect for their commodity. The program will be available when announced by USDA press release, but availability will end when the reserve for a commodity is called. A subsequent reserve for a called commodity will be established when the national average market price determined according to § 1421.683(a) has fallen below the call level. The subsequent reserve will be announced by USDA press release. A called commodity loan may only enter a new reserve program under the provisions of § 1421.683(b). A producer desiring to participate in the Grain Reserve program shall file a request to participate at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.674 Eligibility requirements.

(a) *Producer.* A producer shall be eligible to participate in this program if such producer has an eligible commodity under a regular loan or has an eligible commodity under a purchase agreement which is converted into a regular loan.

(b) *Commodities.* Eligibility of producers to place designated wheat and feed grains into the reserve program will be on a first come, first served basis. After the quantities of wheat established pursuant to § 1421.672 have been accomplished, the program will be suspended to new applicants.

§ 1421.675 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

Provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations") which are not inconsistent with provisions of this subpart shall apply to grain reserve loans.

§ 1421.676 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the General Regulations, and the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse, (2) represent a commodity which is deemed to be stored commingled, (3) be negotiable, (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC, (5) be registered or recorded with appropriate State of local officials when required by State law, and (6) show that storage charges have been paid through the end of first year of the grain reserve agreement or the producer must provide evidence that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on their own commodity is invalid, the warehouseman may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.677 Quantity eligible for grain reserve loans.

(a) *Farm-stored.* The quantity eligible for grain reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for grain reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.678 Quality eligibility requirements of reserve grain.

Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(a) *Feed grains.* Feed grains which enter the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan.

(b) *Wheat.* Wheat which enters the reserve must be merchantable for food and meet the quality eligibility requirements for securing a regular CCC price support loan. The wheat must: (1) Not contain mercurial compounds, toxin-producing molds or other substances poisonous to man or animals, (2) not grade Ergoty or Treated, (3) not grade Weevily, (4) not grade Smutty, and (5) not grade Garlicky.

(c) *Farm-stored grain.* (1) Prior to approval of a grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that (i) the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan, and (ii) the commodity meets the quality eligibility requirements as described in paragraphs (a) and (b) of this section. If the loan inspector questions the eligibility of the commodity, a sample shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (a) and (b) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the loan principal, plus interest, plus unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the loan principal, plus interest, plus unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures specified in 7 CFR 1421.22.

§ 1421.679 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26½ cents per bushel for wheat, barley and corn, 20 cents per bushel for oats, and 47.32 cents per hundredweight for sorghum. Such rates may be changed from time to time by announcement in a separate notice published in the Federal Register but will not be less than (1) 26½ cents per bushel for wheat, barley and corn, (2) 47.32 cents per hundred-weight for sorghum, and (3) 20 cents per bushel for oats.

(b) When storage is computed for less than one year, appropriate daily rates announced in the Federal Register will be used, which will not be less than (1) .0726 cents per bushel for wheat, barley and corn, (2) .1296 cents per hundredweight for sorghum, and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.680.

§ 1421.680 Storage payments.

(a) *Time.* Storage payments shall be paid annually in advance on the date the grain reserve agreement is approved and each anniversary date thereafter, except storage payments will not be made in any State when storage earning has been stopped according to § 1421.680(b) in the State where the grain is stored. If CCC subsequently determines that the price in the State where the grain is stored has dropped below the release level, storage payments will be made for the balance of the year. Second or third year storage payments will not be made to producers having grain reserve warehouse loans until the producers furnish written evidence that at least the next year's storage payment has been paid to the warehouseman or provided for with the warehouseman. If the producer fails to provide written evidence within a reasonable period of time, the county office shall call such loans, and if the loan is not repaid or evidence that that storage has been paid is not furnished, within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.683(d).

(b) *Storage payment units.* Storage payments for farm-stored grain reserve loans shall be based on the regular loan quantity transferred to the reserve, except that such payments can be based on the quantity measured for reserve loan when such measured quantity is more than the regular loan quantity.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. However, notwithstanding the above exception, storage credits will continue to be earned by farmers if their State's mid/month average price received by farmers where the grain is stored (as announced by the Economics, Statistics, and Cooperatives Service) is less than such State's average loan level, plus the difference between the national average loan rate and the release level. Any unearned storage will be subtracted from any future storage payments or will be collected when the loan is redeemed or forfeited to CCC.

(e) *Unearned storage.* No storage payment shall be earned if the producer (1) has made any false representation in the loan documents in obtaining the loan or in settlement of the loan, (2) makes an unauthorized disposition of the commodity with intent to defraud CCC, (3) abandons the commodity, or (4) negligently or otherwise impairs the commodity.

§ 1421.681 Interest rates.

(a) Each grain reserve loan shall bear interest during the first year of the agreement at the rate recorded on the regular loan document or such lower rate as may be later announced in a separate notice(s) published in the FEDERAL REGISTER.

(b) The loans shall not bear interest after the first year.

§ 1421.682 Commingling and replacement of grain.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may, with prior written approval of the county committee, be commingled with other eligible or ineligible grain from the same or any other crop year and of the same class if (1) the county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain prior to commingling at the producer's expense.

(b) *Replacement.* Grain in the reserve may, with prior written approval of the county committee, be replaced with other grain of the same kind and equal value produced by the borrower if (1) the county committee gives prior written approval of such replacement, (2) the grain to be used for replacement is in storage on the farm or the county committee has authorized removal of the reserve grain to licensed storage before replacement according to § 1421.682(c), (3) the county committee inspects and measures the grain replacing the reserve grain at the producer's expense before removal of the reserve grain, and (4) the county committee determines that the grain to be used for replacement is of a quality equal to or better than the grain in storage in the grain reserve program. Removal of farm-stored grain in the grain reserve program without prior written approval will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move the grain in the Grain Reserve Program to licensed warehouse storage before replacement if, (1) prior to the movement of grain, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, and (4) the grain is moved to licensed storage within 30 days after approval is granted and an endorsed negotiable warehouse receipt is deposited in escrow with the County Executive Director. The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and the United States in no way shall be liable for such charges. Whenever the grain which is used to replace the grain covered by the warehouse receipt held in escrow is in farm storage and the county office has determined by inspection and measurement that there is sufficient quantity in storage an the quality is equal to or better than the grain represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever, a producer does not place grain in acceptable farm storage as provided herein prior to maturity of the grain reserve agreement, the producer's interest in the grain represented by the warehouse receipt, held in escrow by the County Executive Director, shall transfer to CCC.

(d) *Release for sale or livestock feed.* The producer may be authorized to move farm-stored grain in the Grain Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if (1) prior to the movement of the grain, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, (4) the grain released for livestock feed will be fed to the producer's own livestock, and (5) an inspection, at the producer's expense, of the unharvested crops indicates there will be sufficient eligible unencumbered production of equal or better quality to replace the reserve commodity.

§ 1421.683 Release levels, redemption requirements, and early redemption charges.

(a) *General.* Commodities under grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is at least 140 percent of the then current national average loan rate in the case of wheat and 125 percent of the then current national average loan rate in the case of feed grains (hereinafter called the release level). The national average market price for each commodity, except barley, will be considered by CCC to have reached the release level when the five-day national average price for the respective commodity at major markets published by the Agricultural Marketing Service, adjusted downward to reflect prices received by farmers by the difference between

(1) The mid-month prices published by the Economics, Statistics and Cooperative Service for the respective commodity for the previous month, and

(2) The average mid-month price for the same month at major markets published by the Agricultural Marketing Service, equals or exceeds the release level for the respective commodity.

The national average market price for barley will be considered by CCC to have reached the release level when the five-day average price for barley published by the Agricultural Marketing Service for the major market which serves the area where the majority of the barley in the reserve is stored, adjusted downward to reflect prices received by farmers by the difference between

(i) The mid-month price published by the Economics, Statistics and Cooperatives Service for feed barley for the previous month in the area where the majority of the barley in the reserve is stored, and

(ii) The average mid-month price for barley published by the Agricultural Marketing Service for the same month at the major market which serves the area where the majority of the barley in the reserve is stored, equals or exceeds the release level for barley.

However, if CCC determines that the trend in such wheat or feed grains (including barley) prices is downward, release may not be authorized. Producers will be advised when the market reaches this release level for any such commodity and that their loans are eligible for redemption without an early redemption charge. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Subsequent announcements to continue release will be for the month following the preceding release period. If a subsequent announcement shows that the market price is below the applicable release level, the terms of the reserve agreement and the regulations which are applicable prior to release shall again apply and the commodity will not be eligible for redemption without an early redemption charge.

(b) *Call level.* The national average market price shall be determined to be at the call level when the national average market price is at least 175 percent of the then current national average loan rate for wheat or 145 percent of the then current national average loan rate for feed grains.

(1) CCC will determine that the national average market price is at call level and will call the loans when the moving average AMS market price as determined in the same manner as prescribed for release levels in § 1421.683(a) is at or above such level for five consecutive market days: *Provided, however,* That if on any one of the five consecutive market days the one-day national average market price adjusted downward by the difference between the mid-month ESCS price and the mid-month AMS price as determined in accordance with § 1421.683(a) falls below the call level, the Secretary may determine that the commodity loans will not be called. If a commodity loan is called and the loan is not redeemed within 90 days after notification, CCC may take title to the commodity.

(2) Notwithstanding any provision of this subpart, with respect to loans called under paragraph (b)(1) of this section, the Secretary may provide producers the options of (i) delaying their date for settlement of such loans for a period of 30 days and such additional 30-day periods as determined necessary by the Secretary in areas when the Secretary determines conditions exist which disrupt orderly marketing of the commodity under loan, and (ii) entering the unsettled loan into a subsequent reserve loan program if during the 90-day settlement period the national average market price of the loan commodity falls below the release level applicable to the loan commodity.

(c) *Redemption or voluntary forfeiture.* Redemption or voluntary forfeiture of a commodity when the national average market price for the commodity is below the release level.

(1) For conditions other than emergency release as provided in paragraph (c)(2) of this section, if a producer redeems the commodity prior to CCC announcing that the release level has been reached, such producer will be required to repay as liquidated damages, the higher of the loan principal, plus interest, plus all storage payments, plus interest, or 140 percent of the producer's then current loan rate in

the case of wheat or 125 percent of the producer's then current loan rate in the case of feed grains. If a producer voluntarily forfeits the commodity prior to CCC announcing that the release level has been reached, such producer shall be required to repay all storage payments, plus interest and, as liquidated damages, the difference between the amount which would otherwise be due on the loan is redeemed at such time and 140 percent in the case of wheat or 125 percent in the case of feed grains of the producer's then current loan rate.

(2) *Emergency release.* In the case of warehouse-stored loans, if it is determined by CCC that storage space is no longer available and approved in-line storage for wheat, sorghum and barley cannot be found, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

[45 FR 53802, Aug. 13, 1980, as amended at 45 FR 81534, Dec. 11, 1980]

§ 1421.684 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of (a) the day the regular loan matured, or (b) the last day of the 36th month following the month in which the grain reserve agreement is approved, except, when the grain reserve loan is an extension of the unmatured regular loan, the grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

Subpart—Regulations Governing the Wheat Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1981 and Prior Crops of Wheat

SOURCE: 46 FR 40861, Aug. 13, 1981, unless otherwise noted.

§ 1421.700 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Wheat Reserve Program which provides for extended farm storage and warehouse storage loans (hereinafter called "wheat reserve loan(s)") with respect to eligible wheat as provided by § 1421.704. Farm storage wheat reserve loans will be evidenced by notes, security agreements, grain reserve agreements, and in certain cases, chattel mortgages or financing statements. Warehouse storage wheat reserve loans will be evidenced by notes, security agreements, and grain reserve agreements, and will be secured by the pledge of warehouse receipts representing eligible wheat in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Wheat Reserve Program, a producer must request and enter into a grain reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.701. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time the wheat is eligible to earn such storage payments. Producers may redeem wheat under the Wheat Reserve Program without repaying earned storage when the national average market price reaches the trigger release level determined in accordance with § 1421.713. At the discretion of the Secretary, all wheat loans in the wheat reserve may be called when the national average market price of wheat reaches the call level determined in accordance with § 1421.713.

§ 1421.701 Length of reserve agreements.

Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.702 Limit on reserve quantity.

The quantity of wheat stored under this program shall be such quantity as determined and announced by the Secretary. In no event, however, shall such quantity be more than 700,000,000 bushels nor less than 300,000,000 bushels.

§ 1421.703 Program availability.

Producers with farm or warehouse-stored wheat under CCC price support loan (hereinafter called "regular loan(s)") may participate in the Wheat Reserve Program anytime the reserve is available. The program will be available when announced by the Secretary for a specified crop of wheat for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. However, entry of eligible wheat into the reserve will not be permitted when the national average market price for wheat has reached the trigger release level and the reserve is in release as provided for by § 1421.713(a). A producer will be permitted to place wheat into the reserve when the national average market price for wheat is again below such release level and the reserve is no longer in release. In addition, entry of eligible wheat into the wheat reserve program will not be permitted and such reserve will be terminated whenever the national average market price for wheat is at or above the call level and the reserve has been called by the Secretary in accordance with the provisions of § 1421.713(b). A producer desiring to participate in the Wheat Reserve program shall file a request to participate in the program at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a wheat reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.704 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced pursuant to § 1421.703 that the reserve is available for a specified crop of wheat, a producer may, upon maturity of a regular loan, place eligible wheat serving as collateral for such loan in the Wheat Reserve Program by applying for a grain reserve agreement. In order to encourage the orderly marketing of wheat, the Secretary may authorize producers with eligible wheat to participate in an announced Wheat Reserve Program prior to maturity of their regular loans with respect to a specified crop of wheat. In such event, producers with eligible wheat under purchase agreements may also be eligible to participate in such wheat reserve upon conversion of their purchase agreements into regular loan agreements. Eligibility of producers to place eligible wheat into the reserve will be on a first come, first served basis.

(b) *Wheat.* Wheat serving as collateral for wheat reserve loans must meet the quantity and quality requirements set forth in § 1421.707 and § 1421.708 of this subpart. The total quantity of wheat entering the reserve may not exceed the quantity specified by the Secretary when the Secretary announces the availability of the reserve.

§ 1421.705 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall apply to wheat reserve loans.

§ 1421.706 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the General Regulations, and the Regulations Governing the Wheat Loan and Purchase Program.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent wheat which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible wheat actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible wheat was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the end of the first year of the grain reserve agreement. In lieu of the latter requirement, the producer may provide evidence satisfactory to CCC that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for wheat which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on their own wheat is invalid, the warehouseman may offer such wheat to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.707 Quantity eligible for wheat reserve loans.

(a) *Farm-stored.* The quantity eligible for wheat reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for wheat reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.708 Quality of wheat eligible for wheat reserve loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture. Wheat which enters the reserve must be merchantable for food and meet the quality eligibility requirements for securing a regular CCC price support loan. The wheat must: (1) Not contain mercurial compounds, toxin-producing molds or other substances poisonous to human or animals; (2) not grade Ergoty or Treated; (3) not grade Weevily; (4) not grade Smutty; and (5) not grade Garlicky.

(b) *Farm-stored wheat.* (1) Prior to approval of a wheat reserve farm-stored loan, the wheat will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (i) The wheat is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the wheat meets the quality eligibility requirements in accordance with the provisions of § 1421.708(a). If the loan inspector questions the eligibility of the wheat, a sample shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored wheat. Farm-stored wheat which is delivered to CCC must meet the quality eligibility requirements specified in § 1421.708(a). CCC may reject the delivery of farm-stored wheat which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the loan principal with interest, plus unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the loan principal with interest, plus unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures specified in 7 CFR 1421.22.

§ 1421.709 Storage rates.

Producers will be paid per annum storage payments at the initial rate of 26½ cents per bushel. While the Secretary may announce changes in the payment rate, such rate will not be less than 26½ cents per bushel per annum. When storage is computed for less than one year, the Secretary will announce an applicable daily payment rate which will not be less than .0726 cents per bushel. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.710.

§ 1421.710 Storage payments.

(a) *Time.* Advance storage payments shall be paid annually on the date the grain reserve agreement is approved and each anniversary date thereafter, except that storage payments will not be made when storage credit is not being earned as provided for in § 1421.710(d) due to the fact that the national average market price is at or above the trigger release level. If CCC subsequently determines that the price has fallen below the trigger release level, storage payments will be made for the remainder of the year. Storage payments for the second year and any subsequent year will not be made to a producer having a wheat reserve warehouse loan until the producer furnishes written evidence to CCC that at least the next year's storage payment has been paid to the warehouseman or provided for with the warehouseman. If the producer fails to provide such written evidence within a reasonable period of time, the county office shall call such loans. If the loan is not repaid or evidence that storage has been paid or provided for is not furnished to CCC within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.713(c).

(b) *Storage payment units for farm-stored wheat.* Storage payments for farm-stored wheat reserve loans shall be based upon the quantity of wheat serving as collateral for a regular loan which is converted to the reserve, except that such payments can be based on the quantity of wheat measured for a wheat reserve loan when such measured quantity is greater than the quantity of wheat serving as collateral for a regular loan.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for wheat is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the market price is again below the trigger release level. Any unearned advance storage payments will be subtracted from any future storage payments or will be collected when the loan is redeemed or the collateral is forfeited to CCC.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer (1) has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.711 Interest rates.

(a) Each wheat reserve loan shall bear interest during the first year at the rate applicable to the Note and Security Agreement and such subsequent increased or decreased interest rates as are determined and announced by the Secretary.

(b) Except as provided in this subsection, wheat reserve loans shall not bear interest after the first year. However, notwithstanding any period during which interest may be waived, interest will accrue at the rate specified in § 1421.711(a) for any period beginning the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level and ending the date of any subsequent announcement by CCC that the market price is again below the trigger release level.

§ 1421.712 Commingling and replacement of wheat.

(a) *Commingling.* In the case of farm storage, wheat in the wheat reserve may be commingled with other eligible or ineligible wheat which is from the same or any other crop year and which is of the same class of wheat if: (1) The county ASC committee gives prior written approval of such commingling; and (2) the county ASCS office inspects and measures the wheat at the producer's expense prior to commingling.

(b) *Replacement.* Farm-stored wheat placed in the reserve may be replaced with other wheat which is of equal or better quality and which is produced by the borrower if: (1) The county ASC committee gives prior written approval of such replacement; (2) the quantity of wheat to be used for replacement is in storage on the farm or the county ASC committee has authorized removal of the reserve wheat to licensed storage before replacement in accordance with § 1421.712(c); (3) the county ASC committee inspects and measures, at the producer's expense, the quantity of wheat which is to replace the reserve wheat before removal of the reserve wheat; and (4) the county committee determines the quality of wheat which is to replace the reserve wheat is equal to or better than the quality of wheat serving as collateral for a wheat reserve loan. Removal of farm-stored wheat in the wheat reserve program without prior written approval from the county ASC committee will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move farm-stored wheat in the Wheat Reserve Program to licensed warehouse storage before replacement if, prior to the movement of wheat: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASCS committee is granted in writing; (3) the county ASCS office inspects and measures the wheat, at the producer's expense, prior to removal; (4) the wheat is moved to licensed storage within 30 days after approval is granted; and (5) an endorsed negotiable warehouse receipt for such wheat is deposited with the ASCS County Executive Director. The producer shall agree to remain liable for all charges incident to the storage of the wheat in the warehouse and CCC in no way shall be liable for any such charges. When the wheat which is used to replace the wheat covered by the warehouse receipt is placed in farm storage, and the county ASCS office has determined by inspection and measurement that there is sufficient quantity of wheat in storage and the quality is equal to or better than the wheat represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place wheat in acceptable farm storage as provided in 7 CFR 1421.7 prior to maturity of the wheat reserve agreement, the producer's interest in the wheat represented by the warehouse receipt, and held by the ASCS County Executive Director, shall transfer to CCC.

(d) *Release for sale of livestock feed.* The producer may be authorized to move farm-stored wheat in the Wheat Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if prior to the movement of the wheat: (1) A written request to do so is filed in the county office; (2) approval of the county committee is granted in writing; (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal; (4) the wheat released for livestock feed will be fed to the producer's own livestock; and (5) an inspection, at the producer's expense, of the unharvested wheat indicates there will be sufficient eligible unencumbered production of equal or better quality to replace the reserve wheat.

§ 1421.713 Trigger release level, call level, redemption requirements, and early redemption charges.

(a) *Trigger release level.* Wheat serving as collateral for wheat reserve loans shall be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is equal to or above the trigger release level for wheat. The trigger release level for wheat shall be $4.65 per bushel. The national average market price for wheat will be considered by CCC to have reached the trigger release level when the five-day national average price for wheat at selected major markets published by the Agricultural Marketing Service, adjusted downward to reflect prices received by farmers by the difference between (1) the midmonth prices published by the Statistical Reporting Service for the respective commodity for the previous month, and (2) the average mid-month price for the same month at selected major markets published by the Agricultural Marketing Service, equals or exceeds the trigger release level. Producers will be advised when the market reaches the trigger release level and that their loans are eligible for redemption without liability for liquidated damages and other applicable charges. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the trigger release level is reached, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Subsequent announcement to continue release will be for the month following the preceding release period. If a subsequent announcement indicates that the national average market price is below the trigger release level, the terms of the reserve agreement and the regulations which are applicable prior to release shall again apply and the wheat will not be eligible for redemption without liability for liquidated damages and other applicable charges.

(b) *Call level.* The national average market price shall be determined to be at the call level when the national average market price is equal to or above the trigger release level determined in accordance with the provisions of § 1421.713(a). CCC will determine that the national average market price is at call level and the Secretary may, in his discretion, call the loans when the national average market price published by the Agricultural Marketing Service is at or above the trigger release level as determined in the manner prescribed in § 1421.713(a) of these regulations. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the wheat.

(c) *Redemption or voluntary forfeiture.* (1) Except in case of emergency release as provided in paragraph (c)(2), if a producer redeems the wheat when the national average market price for wheat is below the trigger release level, such producer will be required to repay the wheat reserve loan principal with interest. In addition, such producer will be required to repay with interest storage payments previously received by the producer with respect to such wheat for the period during which liquidated damages apply, as specified below. The producer is further liable for liquidated damages at the rate of 50 percent of the interest rate applicable to CCC regular loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a release period; or (ii) the date the reserve agreement was approved. The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the wheat to CCC prior to the time of any announcement that the trigger release level has been reached, such producer shall be required to repay with interest all storage payments previously received by the producer with respect to such wheat for the period during which liquidated damages apply. In addition, the producer will be liable for liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forfeiture. Liquidated damages will be assessed for the time period prescribed above.

(2) In the case of warehouse-stored loans, if it is determined by CCC that

the storage space is no longer available, the producer may repay the loan or forfeit the wheat to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the wheat is subject to damage by flood or fire, there is damage to the storage structure, the producer has lost control of the storage structure, or the wheat is going out of condition, the producer may repay the loan or forfeit the wheat to CCC without incurring liability for liquidated damages and may retain earned storage payments.

§ 1421.714 Maturity.

Wheat reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of (a) the day the regular loan matured, or (b) the month following the month in which the grain reserve agreement is approved. However, notwithstanding the foregoing, when the wheat reserve loan is an extension of an unmatured regular loan, the wheat reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

Subpart—Regulations Governing the Feed Grain Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1980 and Prior Crops

SOURCE: 47 FR 9191, Mar. 4, 1982, unless otherwise noted.

§ 1421.720 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Feed Grain Reserve Program which provides for extended farm storage and warehouse storage loans (hereinafter called "feed grain reserve loan(s)") with respect to eligible commodities as provided by § 1421.724. Farm storage feed grain reserve loans will be evidenced by notes, security agreements, grain reserve agreements, and in certain cases chattel mortgages or financing statements. Warehouse storage feed grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Feed Grain Reserve Program, a producer must request and enter into a grain reserve agreement with CCC at the local county ASCS office. Such agreement shall be for a period of time as specified in § 1421.721. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time such commodity is eligible to earn such storage payments. Producers may redeem commodities under the Feed Grain Reserve Program without repaying earned storage payments when the national average market price reaches the trigger release level determined in accordance with § 1421.733. At the discretion of the Secretary of Agriculture (hereinafter the "Secretary") all loans on a commodity in the feed grain reserve may be called when the national average market price for such commodity reaches the call level determined in accordance with § 1421.733.

§ 1421.721 Length of reserve agreements.

Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.722 Limit on reserve quantity.

There is no specific limitation on the quantity of feed grains that may be stored under this program. However, the Secretary may limit the quantity of feed grains which may be stored under this program to that amount which he determines to be necessary in order to stabilize prices and to provide for the orderly marketing of such feed grains.

§ 1421.723 Program availability.

Producers with farm or warehouse-stored feed grain under CCC price support loan (hereinafter called "regular loan(s)") may participate in the Feed Grain Reserve Program any time a reserve is in effect and is available for their commodity. The program will be available when announced by the Secretary for a specified crop of feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. However, entry of eligible commodities into the reserve will not be permitted when the national average market price for such commodity has reached the trigger release level and the reserve is in release as provided for by § 1421.733(a). Producers will be permitted to place an eligible commodity into the reserve when the national average market price for such commodity is again below such release level and the reserve is no longer in release. In addition, entry of eligible commodities into the Feed Grain Reserve Program will not be permitted and such reserve will be terminated whenever the national average market price for such commodity is at or above the call level and the reserve has been called by the Secretary in accordance with the provisions of § 1421.733(b). A producer desiring to participate in the Feed Grain Reserve Program shall file a request to participate in the program at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a feed grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.724 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced pursuant to § 1421.723 that the reserve is available for a specified crop of feed grain, a producer may, upon maturity of a regular loan, place the eligible commodity serving as collateral for such loan into the Feed Grain Reserve Program by making application for and completing a grain reserve agreement. In order to encourage the orderly marketing of feed grains, the secretary may authorize producers with eligible commodities to participate in an announced Feed Grain Reserve Program prior to maturity of their regular loans with respect to a specified crop of feed grains. In such event, producers with eligible feed grains under purchase agreements may also be eligible to participate in such feed grain reserve upon conversion of their purchase agreements into regular loan agreements. Eligibility of producers to place eligible feed grains into the reserve will be on a first-come-first-served basis.

(b) *Feed grain.* Feed grains serving as collateral for feed grain reserve loans must meet the quantity and quality requirements set forth in § 1421.727 and § 1421.728 of this subpart. The total quantity of feed grains entering the reserve may not exceed the quantity specified by the Secretary when the Secretary announces the availability of the reserve.

§ 1421.725 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, corrected at 44 FR 6351, and any amendment thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall apply to feed grain reserve loans.

§ 1421.726 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the end of the first year of the grain reserve agreement. In lieu of the latter requirement, the producer may provide evidence satisfactory to CCC that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on their own commodity is invalid, the warehouseman may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.727 Quantity eligible for feed grain reserve loans.

(a) *Farm-stored.* The quantity eligible for a feed grain reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for a feed grain reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.728 Quality eligibility requirements of feed grain reserve loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), USDA.

(b) *Feed grains.* Feed grains which enter the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan. However, feed grains which grade "Sample Grade" will not be eligible to enter the reserve.

(c) *Farm-stored feed grain.* (1) Prior to approval of a feed grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored feed grain.

§ 1421.729 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for barley and corn, 20 cents per bushel for oats, and 47.32 cents per hundredweight for sorghum. Such rates may be changed from time to time by announcement in a separate notice published in the FEDERAL REGISTER but will not be less than: (1) 26.5 cents per bushel for barley and corn; (2) 47.32 cents per hundredweight for sorghum; and (3) 20 cents per bushel for oats.

(b) When storage is computed for less than one year, appropriate daily rates announced in the Federal Register will be used, which will not be less than: (1) .0726 cents per bushel for barley and corn; (2) .1296 cents per hundredweight for sorghum; and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.730.

§ 1421.730 Storage payments.

(a) *Time.* Advance storage payments shall be paid annually on the date the grain reserve agreement is approved and each anniversary date thereafter, except that storage payments will not be made when storage credit is not being earned as provided for in § 1421.730(d) due to the fact that the national average market price is at or above the trigger release level. If CCC subsequently determines that the price has fallen below the trigger release level, storage payments will be made for the remainder of the year. Storage payments for the second year and any subsequent year will not be made to a producer having a feed grain reserve warehouse loan until the producer furnishes written evidence to CCC that at least the next year's storage payment has been paid to the warehouseman or provided for with the warehouseman. If the producer fails to provide such written evidence within a reasonable period of time, the county ASCS office shall call such loans. If the loan is not repaid or evidence that storage has been paid or provided for is not furnished to CCC within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.733(c).

(b) *Storage payments for farm-stored feed grain.* Storage payments for farm-stored feed grain reserve loans shall generally be based upon the quantity of such commodity serving as collateral for a regular loan which is converted to the reserve. However, such payments can be based on the quantity of such commodity measured for a feed grain reserve loan when such measured quantity is greater than the quantity of such commodity serving as collateral for a regular loan.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the market price is again below the trigger release level for such commodity. Any unearned advance storage payments will be subtracted from any future storage payments or will be collected when the loan is redeemed or the collateral is forfeited to CCC.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer: (1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.731 Interest rates.

(a) As provided in the Note and Security Agreement signed by the producer, each feed grain reserve loan shall bear interest during the first year at the rate applicable to such Note and Security Agreement as well as any subsequent increased or decreased interest rates which may be determined and announced by the Secretary.

(b) Except as provided in this subsection, feed grain reserve loans shall not bear interest after the first year. However, notwithstanding any period during which interest may otherwise be waived, interest will accrue at the rate specified in § 1421.731(a) for any period beginning the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level for such commodity and ending the date of any subsequent announcement by CCC that the market price for the commodity is again below the trigger release level for such commodity.

§ 1421.732 Commingling and replacement of feed grains.

(a) *Commingling.* In the case of farm storage, feed grains in the feed grain reserve may be commingled with other eligible or ineligible feed grains which are from the same or any other crop year and which are of the same class of feed grains if: (1) The county Agricultural Stabilization and Conservation (ASC) committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the feed grain at the producer's expense prior to commingling.

(b) *Replacement.* Farm-stored feed grain placed in the reserve may be replaced with other feed grain of the same kind which is of equal or better quality and which is produced by the borrower if: (1) The county ASC committee gives prior written approval of such replacement; (2) the quantity of feed grain to be used for replacement is in storage on the farm or the county ASC committee has authorized removal of the reserve feed grain to licensed storage before replacement in accordance with § 1421.732(c); (3) the county ASC committee inspects and measures, at the producer's expense, the quantity of feed grain which is to replace the reserve feed grain before removal of the reserve feed grain; and (4) the county ASC committee determines that the quality of feed grain which is to replace the reserve feed grain is equal to or better than the quality of feed grain serving as collateral for a feed grain reserve loan. Removal of farm-stored feed grain in the Feed Grain Reserve Program without prior written approval from the county ASC committee will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move farm-stored feed grain in the Feed Grain Reserve Program to licensed warehouse storage before replacement if, prior to the movement of such commodity: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain is moved to licensed storage within 30 days after approval is granted; and (5) and endorsed negotiable warehouse receipt for such grain is deposited with the ASCS County Executive Director (CED). The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and CCC in no way shall be liable for any such charges. When the feed grain which is used to replace the feed grain covered by the warehouse receipt is placed in farm storage and the county ASCS office has determined by inspection and measurement that: (i) There is a sufficient quantity of feed grain of the same kind in storage; and (ii) the quality is equal to or better than the feed grain represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place feed grain in acceptable farm storage as provided in 7 CFR 1421.7 prior to maturity of the feed grain reserve agreement, the producer's interest in the feed grain, represented by the warehouse receipt and held by the ASCS CED, shall transfer to CCC.

(d) *Release for sale or livestock feed.* The producer may be authorized to move farm-stored grain in the Feed Grain Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if prior to the movement of the grain: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain released for livestock feed will be fed to the producer's own livestock; and (5) an inspection, at the producer's expense, of the unharvested feed grain indicates there will be sufficient eligible unencumbered production of equal or better quality to replace the reserve commodity.

§ 1421.733 Trigger release level, call level, redemption requirements, and early redemption charges.

(a) *Trigger release level.* Commodities serving as collateral for feed grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price of the commodity as determined and announced by CCC is equal to or above the trigger release level established for such commodity. The trigger release level will be established and announced by the Secretary. The trigger release level for barley shall be $2.55 per bushel; corn, $3.15 per bushel; oats, $1.60 per bushel; and sorghum, $5.36 per hundredweight. The national average market price for each commodity, except barley, will be considered by CCC to have reached the trigger release level when the five-day national average price for the respective commodity at selected major markets published by the Agricultural Marketing Service (AMS), adjusted downward to reflect prices received by farmers by the difference between:

(1) The midmonth prices published by the Statistical Reporting Service (SRS) for the respective commodity for the previous month, and (2) the average mid-month price for the same month at selected major markets published by AMS, equals or exceeds the trigger release level for the respective commodity. The national average market price for barley will be considered by CCC to have reached the trigger release level when the five-day average price for barley published by AMS for the major market which serves the area where the majority of the barley in the reserve is stored, adjusted downward to reflect prices received by farmers by the difference between (i) the midmonth price published by SRS for feed barley for the previous month in the area where the majority of the barley in the reserve is stored and (ii) the average midmonth price for barley published by AMS for the same month at the major market which serves the area where the majority of the barley in the reserve is stored, equals or exceeds the trigger release level for barley.

Producers will be advised when the market reaches the trigger release level and that their loans are eligible for redemption without liability for liquidated damages and other applicable charges. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the trigger release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Any subsequent announcement to continue release will be for the month following the preceding release period. If a subsequent announcement indicates that the national average market price for the commodity is below the applicable trigger release level, the terms of the reserve agreement and the regulations which are applicable prior to release shall again apply and the commodity will not be eligible for redemption without liability for liquidated damages and other applicable charges.

(b) *Call level.* CCC will determine that the national average market price is at call level and the Secretary may, in his discretion, call the loans when the national average market price for a commodity published by AMS is at or above the applicable trigger release level as determined in the manner prescribed in § 1421.733(a) of these regulations. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

(c) *Redemption or voluntary forfeiture.* (1) Except in case of emergency release as provided in paragraph (c)(2), if a producer redeems the commodity when the national average market price for such commodity is below the applicable trigger release level, such producer will be required to repay the feed grain reserve loan principal with interest. In addition, such producer will be required to repay with interest storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply, as specified below. The producer is further liable for liquidated damages at the rate of 50 percent of the interest rate applicable to CCC regular loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a release period; or (ii) the date the reserve agreement was approved (in the case of converted reserve agreements, the date the original reserve agreement was approved). The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the commodity to CCC prior to the time of any announcement that the applicable trigger release level has been reached, such producer shall be required to repay with interest all storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply. In addition, the producer will be liable for liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forfeiture. Liquidated damages will be assessed for the time period prescribed above.

(2) In the case of warehouse-stored loans, if it is determined by CCC that the storage space is no longer available, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the storage structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments.

§ 1421.734 Maturity.

Feed grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of: (a) The date the regular loan matured, or (b) the month following the month in which the grain reserve agreement is approved. However, notwithstanding the foregoing, when the feed grain reserve loan is an extension of an unmatured regular loan, the feed grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops

Source: 47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, unless otherwise noted.

§ 1421.740 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Grain Reserve Program which provides for extended farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") with respect to eligible commodities as provided in § 1421.744. Farm storage grain reserve loans will be evidenced by notes, security agreements, grain reserve agreements, and in certain cases chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Grain Reserve Program, a producer must request and enter into a grain reserve agreement with CCC at the local county ASCS office. Such agreement shall be for a period of time as specified in § 1421.741. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time such commodity is eligible to earn such storage payments. Producers may redeem commodities under the Grain Reserve Program without repaying earned storage payments when the national average market price reaches the trigger release level determined in accordance with § 1421.753.

§ 1421.741 Length of reserve agreements.

Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.742 Limit on reserve quantity.

The maximum quantity of wheat and feed grains stored under this program shall be such quantity as determined and announced by the Secretary. In no event, however, shall such established maximum quantity be less than 700,000,000 bushels for wheat and 1,000,000,000 bushels for feed grains.

§ 1421.743 Program availability.

Producers with farm or warehouse-stored grain under CCC price support loan (hereinafter called "regular loan(s)") may participate in the Grain Reserve Program any time a reserve is in effect and is available for their commodity. The program will be available when announced by the Secretary for a specified crop of wheat and feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. However, entry of eligible commodities into the reserve will not be permitted when the national average market price for such commodity has reached the trigger release level and the reserve is in release as provided for by § 1421.753(a). Producers will be permitted to place an eligible commodity into the reserve when the national average market price for such commodity is again below such release level and the reserve is no longer in release. In addition, entry of eligible commodities into the Grain Reserve Program will not be permitted and such reserve will be terminated whenever the Secretary determines that emergency conditions exist and grain reserve loans have been called in accordance with the provisions of § 1421.753(c). A producer desiring to participate in the Grain Reserve Program shall file a request to participate in the program at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.744 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced pursuant to § 1421.743 that the reserve is available for a specified crop of wheat or feed grains, a producer may, upon maturity of a regular loan, place the eligible commodity serving as collateral for such loan into the Grain Reserve Program by making application for and completing a grain reserve agreement. In order to encourage the orderly marketing of wheat and feed grains, the Secretary may authorize producers with eligible commodities to participate in an announced Grain Reserve Program prior to maturity of their regular loans with respect to a specified crop of wheat or feed grains. In such event, producers with eligible commodities under purchase agreements may also be eligible to participate in such grain reserve upon conversion of their purchase agreements into regular loan agreements. The eligibility of producers to place eligible commodities into the reserve will be on a first-come-first-served basis.

(b) *Commodities.* Wheat or feed grains serving as collateral for grain reserve loans must meet the quantity and quality requirements set forth in § 1421.747 and § 1421.748 of this subpart.

§ 1421.745 Applicability of the general regulations governing price support for the 1985 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1985 and Subsequent Crops, published at 44 FR 2353, and corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall also be applicable to grain reserve loans entered into in accordance with the terms and conditions of this subpart.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 50 FR 42510, Oct. 21, 1985]

§ 1421.746 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this Grain Reserve Program must meet all of the requirements of this section and any other requirements contained in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the end of the first year of the grain reserve agreement. In lieu of the latter requirement with respect to storage charges, the producer may provide evidence satisfactory to CCC that storage charges have been paid or have otherwise been provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousemen on their own commodity is invalid, the warehousemen may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.747 Quantity eligible for grain reserve loans.

(a) *Farm-stored.* The quantity eligible for a grain reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for a grain reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.748 Quality eligibility requirements of reserve grain loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) *Wheat.* Wheat which enters the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan and, in addition, may not be "Sample Grade."

(c) *Feed grains.* Feed grains which enter the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan. However, feed grains which grade "Sample Grade" will not be eligible to enter the reserve.

(d) *Farm-stored grain.* (1) Prior to approval of a grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (i) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the commodity meets the quality eligibility requirements in accordance with the provisions of paragraphs (b) and (c) of this section. If the loan inspector questions the eligibility of the commodity, a sample shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (b) and (c) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the loan principal with interest, plus unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the loan principal with interest, plus unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures set forth in 7 CFR 1421.22.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 48 FR 51767, Nov. 14, 1983]

§ 1421.749 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats; and 47.32 cents per hundredweight for sorghum. These rates may be changed from time to time by an announcement by the Secretary and any new agreements would reflect such changes.

(b) When storage is computed for less than one year, appropriate daily rates will be used, which will not be less than: (1) .0726 cents per bushel for wheat, barley and corn; (2) .1296 cents per hundredweight for sorghum; and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with the provisions set forth in § 1421.750.

§ 1421.750 Storage payments.

(a) *Time.* Advance storage payments shall be paid annually on the date the grain reserve agreement is approved and each anniversary date thereafter. However, storage payments will not be made when storage credit is not being earned as provided for in § 1421.750 (d) if the national average market price is at or above the trigger release level. If CCC subsequently determines that the price has fallen below the applicable trigger release level, storage payments will be made for the remainder of the year. Storage payments for the second year and any subsequent year will not be made to a producer having a grain reserve warehouse loan until the producer furnishes written evidence to CCC that at least the next year's storage payment has been paid to the warehouseman or arrangements for such storage payment have been made with the warehouseman. If the producer fails to provide such written evidence within a reasonable time, the county ASCS office shall call such loans. If, within 10 days after the date the loan is called, the loan is not repaid or evidence is not furnished to CCC that storage has been paid or that arrangements for such storage have been made, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.753(b).

(b) *Storage payment units.* Storage payments for farm-stored grain reserve loans shall generally be based upon the quantity of such commodity serving as collateral for a regular loan which is converted to a loan under the Grain Reserve Program. However, such payments can be based on the quantity of such commodity measured for a grain reserve loan when such measured quantity is greater than the quantity of such commodity serving as collateral for the regular loan.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the market price is again below the trigger release level for such commodity. Any unearned advance storage payments will be subtracted from any future storage payments or will be collected when the loan collateral is redeemed by the producer or forfeited to CCC.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer: (1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.751 Interest rates.

(a) As provided in the Note and Security Agreement signed by the producer, each grain reserve loan shall bear interest during the first year at the rate applicable to such Note and Security Agreement as well as any subsequent increased or decreased rate of interest which may be determined and announced by the Secretary.

(b) Except as provided in this subsection, grain reserve loans shall not bear interest after the first year. However, notwithstanding any period during which interest may otherwise be waived, interest will be charged for any period beginning the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level for such commodity and ending the date of any subsequent announcement by CCC that the market price for the commodity is again below the trigger release level for such commodity. Such interest will accrue at the rate applicable to CCC price support loans when interest resumes.

§ 1421.752 Commingling and replacement of feed grains.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may be commingled with other eligible or ineligible grain which is from the same or any other crop year and which is of the same class if: (1) The county Agricultural Stabilization and Conservation (ASC) committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain at the producer's expense prior to commingling.

(b) *Replacement.* Farm-stored grain place in the reserve may be replaced with other grain of the same kind which is of equal or better quality and which is produced by the borrower if: (1) The county ASC committee gives prior written approval of such replacement; (2) the quantity of grain to be used for replacement is in storage on the farm or the county ASC committee has authorized removal of the reserve grain to licensed storage before replacement in accordance with § 1421.752(c); (3) the county ASC committee inspects and measures, at the producer's expense, the quantity of grain which is to replace the reserve grain before removal of the reserve grain; and (4) the county ASC committee determines that the quality of grain which is to replace the reserve grain is equal to or better than the quality of grain serving as collateral for a grain reserve loan. Disposition of farm-stored grain in the Grain Reserve Program without prior written approval from the county ASC committee will be considered unauthorized disposition.

(c) *Licensed storage.* The producer may be authorized to move farm-stored grain in the Grain Reserve Program to licensed warehouse storage before replacement if, prior to the movement of such commodity, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain is moved to licensed storage within 30 days after approval is granted; and (5) an endorsed negotiable warehouse receipt for such grain is deposited with the ASCS County Executive Director (CED). The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and CCC in no way shall be liable for any such charges. The warehouse receipt shall be returned to the person who deposited it with the ASCS CED when the grain which is used to replace the grain covered by the warehouse receipt is placed in farm storage and the county ASCS office has determined by inspection and measurement that: (i) There is a sufficient quantity of grain of the same kind in storage; and (ii) the quality is equal to or better than the grain represented on the warehouse receipt. Whenever a producer does not place grain in acceptable farm storage as provided in 7 CFR 1421.7 prior to maturity of the grain reserve agreement, the producer's interest in the grain which is represented by the warehouse receipt and held by the ASCS CED, shall tranfer to CCC.

(d) *Release for sale or livestock feed.* (1) Except as provided in paragraph (d)(2) of this section, a producer shall be permitted to move farm-stored grain in the Grain Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if, prior to the movement of the grain, the following conditions are met: (i) A written request to do so is filed in the county ASCS office; (ii) approval of the county ASCS Committee is granted in writing; (iii) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (iv) the grain released for livestock feed will be fed to the producer's own livestock; and (v) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible unencumbered production of equal or better quality to replace the grain in the Grain Reserve Program.

(2) A producer who places farm-stored corn or sorghum into the Grain Reserve Program by entering into a new grain reserve agreement on or after October 8, 1982 shall be permitted to remove such corn or sorghum from the reserve if it is in danger of going out of condition and if prior to removal a written request to do so is filed in the county ASCS office; approval of the county ASCS committee is granted in writing; and the county ASCS office inspects and measures the grain at the producer's expense. Any corn or sorghum which is removed from the Grain Reserve Program must be replaced within 15 days by an equal quantity and quality of corn or sorghum which (i) the producer has on hand; (ii) is purchased by the producer; or (iii) is from the producer's new crop.

[47 FR 35494, Aug. 16, 1982; 47 FR 36805, Aug. 24, 1982, as amended at 47 FR 44541, Oct. 8, 1982]

§ 1421.753 Trigger release level, redemption requirements, early redemption charges, and emergency call.

(a) *Trigger release level.* Commodities serving as collateral for grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price of the commodity as determined and announced by CCC is equal to or above the trigger release level established for such commodity. The trigger release level will be established and announced by the Secretary. The trigger release level for wheat shall be $4.65 per bushel; barley, $2.65 per bushel; corn, $3.25 per bushel; oats, $1.65 per bushel; and sorghum, $5.54 per hundredweight. Any such level may be changed by an announcement by the Secretary. Any trigger release level which is subsequently established and announced by the Secretary shall be applicable only to those reserve agreements executed after the announcement of such new levels. The national average market price for each commodity, except barley, will be considered by CCC to have reached the trigger release level when the five-day national average price for the respective commodity, at selected major markets, published by the Agricultural Marketing Service (AMS), adjusted downward to reflect prices received by farmers by the difference between: (1) The mid-month prices published by the Statistical Reporting Service (SRS) for the respective commodity for the previous month, and (2) the average mid-month price for the same month at selected major markets, published by AMS, equals or exceeds the trigger release level for the respective commodity. The national average market price for barley will be considered by CCC to have reached the trigger release level when the five-day average price for barley published by AMS for the major market which serves the area where the majority of the barley in the reserve is stored, adjusted downward to reflect prices received by farmers by the difference between (i) the mid-month price published by SRS for feed barley for the previous month in the area where the majority of the barley in the reserve is stored and (ii) the average midmonth price for barley published by AMS for the same month at the major market which serves the area where the majority of the barley in the reserve is stored, equals or exceeds the trigger release level for barley.

Producers will be advised when the market reaches the trigger release level and their loans are eligible for redemption without liability for liquidated damages and other applicable charges. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the trigger release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Any subsequent announcement to continue release will be for the month following the preceding release period. If a subsequent announcement indicates that the national average market price for the commodity is below the applicable trigger release level, the terms of the reserve agreement and the regulations which are applicable prior to release shall again apply and the commodity will not be eligible for redemption without liability for liquidated damages and other applicable charges.

(b) *Redemption or voluntary forfeiture.* (1) Except, in case of emergency release as provided in paragraph (b)(2) hereof, if a producer redeems the commodity when the national average market price for such commodity is below the applicable trigger release level, such producer will be required to repay the grain reserve loan pricipal with interest. In addition, such producer will be required to repay with interest storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply, as specified below. The producer is further liable for liquidated damages at the rate of 50 percent of the interest rate applicable to CCC regular loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a release period; or (ii) the date the reserve agreement was approved (in the case of converted reserve agreements, the date the original reserve agreement was approved). The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the commodity to CCC prior to the time of any announcement that the applicable trigger release level has been reached, such producer shall be required to repay with interest all storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply. In addition, the producer will be liable for liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forefeiture. Liquidated damages will be assessed for the time period prescribed above.

(2) In the case of warehouse-stored loans, if it is determined by CCC that the storage space is no longer available, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the storage structure, the producer has lost control of the storage structure, or the commodity is going out of condition.

(c) *Emergency call.* Notwithstanding any other provision of this rule, the Secretary may require producers to repay grain reserve loans prior to the maturity date of such loans if the Secretary detemines that emergency conditions exist which require that the commodity which is serving as collateral for the loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of loan principal and interest, plus unearned storage. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

§ 1421.754 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of: (1) The date the regular loan matured, or (2) the month following the month in which the grain reserve agreement is approved. However, notwithstanding the foregoing, when the grain reserve loan is an extension of an unmatured regular loan, the grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

§ 1421.755 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560-0087 has been assigned.

[48 FR 51768, Nov. 14, 1983]

Subpart—Regulations Governing a Recourse Loan Program for 1980-Crop Aflatoxin-Contaminated Corn

SOURCE: 45 FR 63833, Sept. 26, 1980, unless otherwise noted.

§ 1421.800 Purpose.

This subpart contains the regulations which provide corn producers recourse loans on 1980-crop aflatoxin contaminated corn. Recourse price support loans shall be made available to producers in individual States when the Deputy Administrator, State and County Operations (DASCO) determines according to § 1421.801 that the loans are needed in that State. The loans must be repaid at maturity. CCC will not accept delivery of the contaminated corn. The loans will be evidenced by notes and secured by security agreements as provided in the General Regulations.

§ 1421.801 Availability.

Recourse loans on 1980-crop aflatoxin-contaminated corn will be available in States designated by DASCO. DASCO shall so designate a State whenever it is determined by DASCO that the State in question has significant quantities of aflatoxin-contaminated corn and that this program is needed in order to: (a) Provide producers an opportunity to maintain control of the corn for an extended period; (b) lessen the possibility of the contaminated corn entering normal market channels; and (c) provide producers the opportunity to take advantage of potential utilization methods for contaminated corn.

§ 1421.802 Eligible corn.

To be eligible for a loan under this program, corn must: (a) Be contaminated with aflatoxin at levels in excess of 20 parts per billion, (b) contain moisture of 12 percent or less, and (c), if farm stored, be stored identity preserved.

§ 1421.803 Loan rates.

The loan rate is $1.70 per bushel.

§ 1421.804 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.805 Warehouse charge.

If the producer has not prepaid or provided for storage costs through loan maturity, the county office shall deduct storage charges from the loan proceeds at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received by the warehouse, or date through which storage has been prepaid or provided for, to the maturity date.

§ 1421.806 Settlement.

Loans must be repaid at maturity. CCC will not accept delivery of the contaminated corn. Producers must repay principal plus interest. If the producer destroys the corn subsequent to disbursement of loan proceeds and is otherwise eligible for a disaster payment on 1980-crop corn, the disaster payment shall be applied to the amount due CCC and the producer must repay the balance.

Subpart—Regulations Governing the Special Producer Stoarage Loan Program

Source: 50 FR 16222, Apr. 25, 1985; 50 FR 30926, July 31, 1985, unless otherwise noted.

§ 1421.900 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Special Producer Storage Loan Program which provides for farm storage and warehouse storage loans with respect to eligible commodities as provided in § 1421.904. Farm storage loans will be evidenced by notes, security agreements, and chattel mortgages or financing statements. Warehouse storage loans will be evidenced by notes, security agreements, and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Special Producer Storage Loan Program, a producer must request and enter into a contract with CCC at the local county ASCS office. Such contract shall be for a period of time as specified in § 1421.902. Storage payments will be paid to the producer annually during the loan period for the time such commodity is serving as collateral for a loan under the Special Producer Storage Loan Program. Producers may redeem at any time during the loan period commodities pledged as collateral under the Special Producer Loan Program without repaying earned storage payments. Unearned storage payments must be repaid when the loan collateral is redeemed.

§ 1421.901 Administration.

(a) The program will be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by ASC State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or the Administrator's designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1421.902 Length of special producer storage loan agreements.

Except as provided § 1421.914, the loan agreement shall be for a 12-month period. The loan agreement may be extended for an additional 12-month period if authorized and announced by the Secretary.

§ 1421.903 Program availability.

Producers with matured grain reserve loans may participate in the Special Producer Loan Program whenever the program is available for their commodity. The program will be available when announced by the Secretary for a specified crop of wheat and feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. In addition whenever the loan maturity dates have been accelerated under the provision of § 1421.914, any outstanding special producer storage loan agreements will be terminated and producers of eligible commodities will not be permitted to pledge their commodities as collateral for a loan under this subpart. A producer desiring to participate in the Special Producer Loan Program shall file a request to participate in the program at the county ASCS office which approved the producer's matured grain reserve loan. An approved cooperative marketing association shall request a special producer storage loan at the county ASCS office which approved the association's matured grain reserve loan.

§ 1421.904 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced under the provisions of § 1421.903 that the Special Producer Loan Program is available for a specified crop of wheat or feed grains, a producer may, upon maturity of a grain reserve loan, pledge the eligible commodity serving as collateral for the grain reserve loan as collateral for a loan offered in accordance with the Special Producer Loan Program as authorized by this subpart.

(b) *Commodities.* Wheat or feed grains serving as collateral for special producer storage loans must meet the quantity and quality requirements as set forth in § 1421.909 of this subpart.

§ 1421.905 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, and corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall also be applicable to loan note and security agreements entered into in accordance with the terms and conditions of this subpart.

§ 1421.906 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.907 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this Special Producer Loan Program must meet all of the requirements of this section and any other requirements contained in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the loan period, except that a producer will otherwise be permitted to provide evidence satisfactory to CCC that storage charges have been paid or have otherwise been provided for through the loan period.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousemen on their own commodity is invalid, the warehousemen may pledge such commodity as loan collateral to CCC only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.908 Quantity eligible for special producer storage loans.

The quantity of a commodity which is eligible to be pledged as collateral for a special producer storage loan may not exceed the outstanding loan quantity of the commodity which is pledged as collateral for the matured grain reserve loan.

§ 1421.909 Quality eligibility requirements of special producer storage loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) *Wheat.* Wheat which is pledged as collateral for a loan made in accordance with the Special Producer Storage Loan Program must meet the quality requirements which were applicable to the collateral which secured the grain reserve loan and, in addition, may not be "Sample Grade".

(c) *Feed grains.* Feed grains which are pledged as collateral for a loan made in accordance with the Special Producer Storage Loan Program must meet the quality requirements which were applicable to the collateral which secured the grain reserve loan and, in addition, may not be "Sample Grade".

(d) *Farm-stored grain.* (1) Prior to approval of a farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (i) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the commodity meets the quality eligibility requirements in accordance with the provisions of paragraphs (b) and (c) of this section.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (b) and (c) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral, plus any unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral, plus any unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures set forth in § 1421.22.

§ 1421.910 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats; and 47.32 cents per hundredweight for sorghum. These rates may be changed from time to time as determined and announced by the Secretary.

(b) Appropriate daily rates will be used when storage is computed for less than one year. The daily rates will not be less than: (1) .0726 cents per bushel for wheat, barley and corn; (2) .1296 cents per hundredweight for sorghum; and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with the provisions set forth in § 1421.911.

§ 1421.911 Storage payments.

(a) *Advance storage payments.* An annual advance storage payment shall be paid to the producer.

(b) *Storage payment units.* Storage payments for special producer storage loans shall be based upon the quantity of the commodity which is available as loan collateral for the grain reserve loan on the date the grain reserve loan matured.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan period. However, storage credit shall stop on the date the loan matures under the provisions of § 1421.914. Any unearned advance storage payments will be collected when the loan collateral is redeemed by the producer or forfeited to CCC before maturity of the agreement.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer: (1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.912 Interest rates.

(a) As provided for in the note and security agreement which is signed by the producer, each special producer storage loan shall bear interest during the loan period at the rate applicable to CCC price support loans in effect on the first day of the loan period together with any subsequent increased or decreased rate of interest which may be determined and announced by the Secretary.

(b) Special producer storage loans which have not been repaid by the maturity date or the original required settlement date for loans which mature in accordance with the provisions of § 1421.914 shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR Part 1403. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for matured loans, whichever is applicable.

§ 1421.913 Commingling and replacement of grain.

(a) In the case of farm storage, grain in the Special Producer Storage Loan Program may be commingled with other eligible or ineligible grain which is from the same or any other crop year and which is of the same class if: (1) The county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain at the producer's expense prior to commingling.

(b) *Repacement.* Farm-stored grain placed in the Special Producer Storage Loan Program may be replaced with other grain of the same kind which is of equal or better quality and which is produced by the borrower if: (1) The county committee gives prior written approval of such replacement; (2) the quantity of grain to be used for replacement is in storage on the farm or the county committee has authorized removal of the grain to CCC-approved warehouse storage before replacement in accordance with this section; (3) the county committee inspects and measures, at the producer's expense, the quantity of grain which is to replace the grain before removal of the grain; and (4) the county committee determines that the quality of grain in equal to or better than the quality of grain serving as collateral for a special producer storage loan. Disposition of farm-stored grain in the Special Producer Storage Loan Program without prior written approval from the county committee will be considered to be an unauthorized disposition.

(c) *Release for sale or livestock feed.* To assist the producer in maintaining quality of the loan collateral, the producer may be authorized to move farm-stored grain which is pledged as loan collateral under the Special Producer Storage Loan Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if, prior to the movement of the grain, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain released for livestock feed will be fed to the producer's own livestock; and (5) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible unencumbered production of equal or better quality to replace the grain in the Special Producer Storage Loan Program.

§ 1421.914 Redemption and acceleration of loan maturity date.

(a) *Redemption.* Producers may redeem the commodity pledged as collateral for the loan at any time during the loan period. Producers will be required to repay the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral. In addition, the producer will be required to refund any unearned storage payments made in accordance with the provisions of § 1421.911.

(b) *Acceleration of loan maturity date.* Notwithstanding any other provision of this subpart, the Secretary may accelerate the maturity date of special producer storage loans if the Secretary determines that conditions exist which require that the commodity which is serving as collateral for the loan be made available in the market to meet domestic or international needs. Repayment shall be in accordance with paragraph (a) of this section. If the collateral for the matured loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

§ 1421.915 Maturity.

Except as otherwise provided in § 1421.914, special producer storage loans mature and are due and payable on the last day of the 12th calendar month after the maturity date of the matured grain reserve loan.

§ 1421.916 Miscellaneous provisions.

(a) The contract between CCC and the producer shall contain such other provisions as CCC determines appropriate to carry out the program established by this subpart.

(b) The following provisions of this title concerning general program administration also apply to the program established by this subpart:

(1) Part 13, Setoffs and Withholding.

(2) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(3) Part 780, Appeal Regulations.

(4) Part 1403, Interest on Delinquent Debts.

§ 1421.917 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560-0087 has been assigned.

Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

SOURCE: 44 FR 67078, Nov. 23, 1979, unless otherwise noted.

§ 1421.5551 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the initial or continuing approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, and soybeans under a Uniform Grain Storage Agreement (which commodities hereinafter referred to as "grain"),

(2) Rough rice under a Uniform Rice Storage Agreement,

(3) Milled rice under a Milled Rice Storage Agreement,

(4) Dry Edible Beans under a Bean Storage Agreement, and

(5) Seed under a Seed Storage Agreement, which are owned by CCC or held by CCC as security for price support loans.

This subpart is not applicable to grain, rough and milled rice, dry edible beans, and seed purchased in store for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-24, "Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed", and a completed Form CCC-24-1, "Supplement to Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed",

(2) A current financial statement prepared in accordance with generally accepted accounting principles meeting the following requirements:

(i) Each financial statement shall include, but not be limited to the following: (A) A balance sheet; (B) a statement of income (profit and loss); (C) statement of retained earnings; and (D) a statement of changes in the financial position.

(ii) Each financial statement shall be accompanied by one of the following:

(A) A report of audit or review conducted by an independent CPA or an independent public accountant in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's report of audit or review shall include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statement, or

(B) A compilation report of the financial statement which is prepared by a grain commission firm or a management firm if such firm has been authorized by the Deputy Vice President, CCC (Deputy Administrator, Commodity Operations, ASCS) to provide a compilation report of financial statements of warehousemen.

(iii) All financial statements shall be accompanied by a certification by the chief executive officer of the warehouseman, under penalty of perjury, that the financial statement(s) accurately reflects the financial condition of the warehouseman for the period specified in such statement.

(iv) A current financial statement on Form WA-51-2, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51-2 with approval of the Director, KCCO, or the Director's designee.

(v) Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1421.5552(a)(2) and such other documents or information as CCC may require.

(e) The provisions of paragraph (d)(2) of this section shall also be applicable to warehousemen who have an existing storage contract with CCC. Such warehousemen with existing storage contracts shall submit their financial statements to CCC in the manner prescribed reflecting their financial condition as of the close of the warehouseman's fiscal or calendar year's operation, whichever is applicable. Thereafter, the financial statements and the audit, review or compilation reports shall be furnished annually to reflect the warehouseman's fiscal or calendar year's operation, whichever is applicable, and at such other times as may be required by the AMS or CCC.

[44 FR 67078, Nov. 23, 1979, as amended at 47 FR 22502, May 25, 1982; Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5552 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity involved which the warehouse can accommodate when stored in the customary manner) under approved contract with CCC times twenty (20) cents per bushel in the case of grain, forty (40) cents per hundredweight in the case of rough rice, seventy (70) cents per hundredweight in the case of milled rice, and fifty (50) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to the product obtained by multiplying the estimated total number of pounds of seed to be stored times six (6) cents per pound. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only prenumbered warehouse receipts and scale tickets,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete the load out within approximately thirty (30) working days of that quantity of grain for which the warehouse is or may be approved under a Uniform Grain Storage Agreement and within approximately ninety (90) working days of that quantity of the commodity for which the warehouse is or may be approved under a Uniform Rice Storage Agreement, a Milled Rice Storage Agreement, a Bean Storage Agreement, or a Seed Storage Agreement. The loadout capacity of any of these warehouses need not exceed the equivalent of 200 railroad cars per day.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67078, Nov. 23, 1979, as amended at 47 FR 22503, May 25, 1982; Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5553 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC,

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67078, Nov. 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5554 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1421.5555 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash

or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67078, Nov, 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5556 Approval of warehouses, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1421.5552, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1421.5552(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5557 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67078, Nov. 23, 1979; 44 FR 74796, Dec. 18, 1979]

§ 1421.5558 Contract fees.

(a) Each warehouseman who has a non-Federally licensed grain or rice warehouse in States that do not have a Cooperative Agreement with CCC for warehouse examinations must pay an annual contract fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought as follows:

(1) A warehouseman who has an existing agreement with CCC for the storage or handling of CCC-owned commodities or commodities pledged to CCC as loan collateral must pay an annual contract fee for each ware-

house approved under that agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 29641, July 22, 1985]

§ 1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0009 and 0560-0036.

[Amdt. 4, 50 FR 29641, July 22, 1985]

PART 1422—PEANUTS

Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

Sec.

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1422.2 Standards for warehousemen and warehouses.
1422.3 Financial statement.
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1422.5 Inspection of warehouses.
1422.6 Exceptions.
1422.7 Basis for approval or disapproval.
1422.8 Other conditions for disapproval.
1422.9 Approval of warehouse and duration of approval.
1422.10 Waiver of requirements.

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended; (15 U.S.C. 714b).

Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

SOURCE: 32 FR 20767, Dec. 23, 1967, unless otherwise noted.

§ 1422.1 General statement and administration.

(a) This subpart prescribes the procedure to be followed by warehousemen who desire the Commodity Credit Corporation (hereinafter referred to as "CCC") to approve their cold storage warehouses for the storage and handling, under contract with CCC, of shelled peanuts which are owned by CCC or held by CCC as security for price support loans and which require refrigerated storage. It also prescribes the requirements of CCC for approval of such warehouses. Warehousemen desiring to secure approval of their warehouses under this subpart may obtain information and the necessary application and other forms from (1) the Producer Associations Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, DC 20250, or (2) the following associations, each of which, under contract with CCC, performs certain functions in connection with CCC's inventory of peanuts: GFA Peanut Association, Camilla, Ga. (Southeastern Area); Southwestern Peanut Growers Association, Gorman, Tex. (Southwestern Area); and Peanut Growers Cooperative Marketing Association, Franklin, Va. (Virginia-Carolina Area). Warehousemen shall submit all forms, statements, and other information required by this subpart to be furnished to CCC to the association in the area where the warehouse is located.

(b) Although a warehouse must be approved by CCC before it will be used for the storage and handling of peanuts, such approval, or the execution of a storage contract with the warehouseman, does not constitute a commitment that the warehouse will be used by CCC and no official or employee of CCC or any association named in this section is authorized to make any such commitment.

§ 1422.2 Standards for warehousemen and warehouses.

Initial approval of a warehouse by CCC, and its continued approval of an approved warehouse, are conditioned upon conformance with the following standards.

(a) The warehouseman shall, except as provided in § 1422.6:

(1) Be an individual, partnership, or an existing legal entity engaging in the business of storing for hire and, if organized in the corporate form, have charter authority to engage in such business.

(2) Have sufficient experience in, and knowledge of, the warehousing business to enable him to give adequate protection and services with respect to the peanuts to be stored.

(3) Have satisfactorily complied with all previous contracts with CCC and instructions issued thereunder: *Provided, however,* That this provision shall apply only in circumstances excepted from CCC regulations governing suspension and debarment (31 FR 4950), and any amendments thereto, unless suspension or debarment action has been taken as provided in such regulations.

(4) Have a net worth of at least $10,000 to assure his financial responsibility.

(5) Have sufficient funds available to meet ordinary operating expenses which, if not paid, would cause cessation of operations.

(6) Furnish CCC a completed Application for Approval of a Warehouse (Form CCC-1029).

(7) Furnish CCC a completed Schedule of Rates (Form CCC-1030-2) on which he certifies that the rates quoted in the schedule are not in excess of rates charged other customers.

(8) Furnish CCC financial statements as may be required under § 1422.3.

(9) Furnish CCC surety bonds as may be required under § 1422.4.

(10) Maintain complete and accurate inventory and operating records.

(11) If State or local law requires that warehousemen be licensed to engage in the business of storing goods for hire, furnish CCC evidence that he is so licensed by the appropriate licensing authority.

(b) Supervisory employees of the warehouse shall meet the requirements of (1) paragraph (a)(2) of this section, and (2) paragraph (a)(3) of this section.

(c) Owners, directors, responsible officers, and employees of the warehouse shall meet requirements of paragraph (a)(3) of this section.

(d) The warehouse shall meet the following requirements:

(1) Be of sound construction with equipment in good repair, and so constructed as to adequately protect the peanuts.

(2) Be under the control at all times of the warehouseman who executes the storage contract. Peanuts are not to be stored in an area operated as a "field warehouse" unless the warehouseman is the "field warehouseman."

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

(4) Have equipment to adequately handle, preserve, and protect the peanuts, including dual refrigeration units and adequate fire fighting equipment.

(5) Have space for the storage separate from peanuts of any products which CCC determines adversely affect the storage life, quality, or flavor of peanuts or are subject to a significantly greater fire risk than peanuts.

(6) Have adequate load-out capacity, as determined by CCC.

[32 FR 20767, Dec. 23, 1967; 33 FR 223, Jan. 6, 1968]

§ 1422.3 Financial statement.

(a) Except as provided in § 1422.6, the warehouseman shall furnish either (1) a fully completed financial statement on Form TW-51, Financial Statement, or (2) a Form TW-51 (i) completed as to page 1 and the General Information and Certification section of page 4, and (ii) accompanied by a financial statement prepared and certified or otherwise authenticated by the public accountant to the extent consistent with the accountant's verification of the facts contained in the statement. Such certification or authentication may be separate from the financial statement. The warehouseman shall execute the Certification on Form TW-51 in every case.

(b) A financial statement furnished by a warehouseman shall show the financial condition of the warehouseman as of the date not more than 60 days prior to (1) the date of the application, if the statement accompanies the application, or (2) the date of the statement, if the statement is furnished under § 1422.9.

(c) The financial statement and other financial data furnished by a warehouseman will not be disclosed by CCC except as required by law or authorized by CCC regulations relating to official records.

§ 1422.4 Bonding requirements.

(a) Except as provided in § 1422.6 and paragraph (b) of this section, the warehouseman shall furnish to CCC a performance bond, executed on a form furnished or approved by CCC by surety companies which have been approved by the U.S. Treasury Department (Circular No. 570) and which maintain an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(1) The amount of such performance bond shall be not less than 5 percent of the net book value of the estimated quantity of peanuts to be stored, but in no event less than $5,000 or, except as provided in paragraph (c) of this section more than $100,000.

(2) The warehouseman may apply against the total amount of bond coverage required the amount of a surety bond which is furnished under State law or under operational rules of nongovernmental supervisory bodies and which is determined by the Director, Producer Associations Division, to protect adequately the interest of CCC.

(b) Cash, negotiable securities, and legal liability insurance policies may be accepted in lieu of the equivalent amount of required bond coverage under the following conditions:

(1) CCC will determine the acceptability of and valuation to be placed on any cash or negotiable securities offered in substitution for bond coverage. When the period for which the bond was required has ended and it is determined that all liability under the storage agreement with CCC has terminated, the cash or securities will be returned to the warehouseman.

(2) Legal liability insurance policies offered in substitution for bond coverage must show CCC as the insured and be approved by the Director, Producer Associations Division.

(c) Notwithstanding any other provisions of this subpart, CCC may require additional bond coverage if in the light of all the circumstances relating to the operation of the warehouse, CCC determines that the amount of bond coverage required under paragraph (a)(1) of this section is not sufficient to protect adequately the interests of CCC.

§ 1422.5 Inspection of warehouses.

Except in the case of a warehouse licensed under the U.S. Warehouse Act for the storage and handling of peanuts, prior to the time CCC approves a warehouse for the storage and handling of peanuts CCC will have the warehouse examined and will take such other action as it considers necessary to determine whether the requirements of § 1422.2 have been met. The warehouse examiner will make recommendations regarding the approval or disapproval of the warehouse.

§ 1422.6 Exceptions.

Notwithstanding any other provision of this subpart:

(a) Warehousemen licensed under the U.S. Warehouse Act for the storage and handling of peanuts will not be required to furnish performance bonds or financial statements in order to be approved by CCC, and their warehouses will not be subject to regular examinations other than those required by that Act, but will be subject to such special examinations as CCC may determine are necessary. All other requirements of this subpart shall, unless otherwise provided, be met by such warehousemen seeking approval under this subpart.

(b) CCC will accept a Certificate of Competency issued by the Small Business Administration with respect to a warehouseman as establishing conformance by the warehouseman with the standards prescribed in § 1422.2(a)(1), (2), (4), and (5); (b)(1); and (d)(1), (2), (3), and (4).

(c) CCC may approve a warehouseman who meets the standard set forth

paragraph (a)(4) of § 1422.2 but who
ils, or whose warehouse fails to meet
ne or more of the other standards of
at section, if (1) CCC determines
at the storage and handling condi-
ons within the warehouse provide
tisfactory protection for peanuts, (2)
CC determines that the services of
ne warehouseman are required, and
) the warehouseman furnishes addi-
onal bond coverage (or acceptable
bstitute security) which is in an
nount equal to at least twice the
nount of the bond requirement
nder § 1422.4(a)(1) and which meets
ne other requirements of § 1422.4.

1422.7 Basis for approval or disapproval.

A review and an analysis will be
ade of the information disclosed by
ne warehouseman's application, ware-
ouse examiner's report and recom-
endation, financial statement, credit
eports, and other pertinent informa-
on available from other sources. If,
n the basis of this review and analy-
s, it is determined that the ware-
ouseman and the warehouse conform
ith the standards and other require-
ents set out in this subpart, the
arehouse will be approved. If it is de-
rmined that the warehouseman fails
meet the standard set forth in
1422.2(a)(4) and 1422.8, the ware-
ouse will not be approved. If it is de-
rmined that one or more of the
her standards of § 1422.2 are not
et, the applicant may be approved as
rovided in § 1422.6(c).

1422.8 Other conditions for disapproval.

Applications shall not be approved
r existing approval continued in
fect) if:

(a) The warehouseman (if license is
quired) is in violation of any provi-
ons of the regulations of the licens-
g authority, or if any condition
hich has resulted or may result in
ne refusal, suspension, or revocation
the applicable warehouse license
as not been corrected. Correction of
ny such condition shall not result in
tomatic approval of the warehouse
nd CCC may require the submission
a new application, such additional
formation as it deems pertinent, and
new inspection of the warehouse to
determine whether it meets the requirements of this subpart.

(b) The warehouseman operating the warehouse for which approval is being sought, or any of the directors, responsible officers and employees thereof are suspended or debarred from contracting pursuant to regulations of CCC.

§ 1422.9 Approval of warehouse and duration of approval.

(a) After a warehouse has been approved and the applicable storage contract has been signed by CCC, a copy of such contract will be forwarded to the warehouseman by CCC. The warehouse will then be eligible to store and handle CCC-owned and loan peanuts.

(b) The financial condition of, and the amount of bond or substitute security furnished by, approved warehousemen will be reviewed from time to time to determine that the requirements of CCC are being met and the warehouseman shall furnish any additional bond coverage or substitute security which may be determined by CCC to be required under the provisions of this subpart. The warehouse will be reexamined from time to time to determine its continued compliance with the standards and requirements of this subpart. If at any time it is determined that a warehouseman or the warehouse does not conform with the standards and other requirements set out in this subpart, CCC shall take such appropriate action as may be necessary to protect the interests of CCC.

(c) Approval of the warehouse will remain in effect until the warehouse is removed from the list of approved warehouses, the storage contract is terminated, or the warehouseman is suspended or debarred from contracting with CCC under applicable regulations.

§ 1422.10 Waiver of requirements.

If warehousing services required in fulfilling responsibilities under CCC's programs cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available, CCC may exempt the applicant from one or more of the provisions of this subpart and may establish other requirements in lieu thereof as determined necessary to safeguard the interests of CCC. Such action may be taken only by the Executive Vice President, Commodity Credit Corporation.

PART 1423—PROCESSED AGRICULTURAL COMMODITIES

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

Sec.

1423.1 General statement and administration.
1423.2 Basic standards.
1423.3 Bonding requirements for net worth.
1423.4 Examination of warehouses.
1423.5 Exceptions.
1423.6 Approval of warehouse, requests for reconsideration.
1423.7 Exemption from requirements.
1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c).

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

SOURCE: 44 FR 67081, Nov. 23, 1979, unless otherwise noted.

§ 1423.1 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Dry or refrigerated processed agricultural commodities under a Processed Commodities Storage Agreement (hereinafter referred to as "processed commodities"),

(2) Bulk oils, under a Contract or Agreement for Tank Storage, which are owned by CCC or held by CCC as collateral for price support loans, and

(3) Extracted Honey (hereinafter referred to as "honey") under a Honey Storage Agreement, either in bulk or in containers meeting specifications in the applicable honey price support regulations, which is owned by CCC or held by CCC as security for price support loans. This subpart shall not apply to processed commodities, extracted honey, and bulk oils purchased in store by CCC for prompt shipment or to handling of commodities.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-560, "Application for Approval of Warehouse (Processed Commodities)", or Form CCC-513, "Application for Approval of Tank Farm", or Form CCC-55, "Application for Approval of Warehouse for Honey Storage Contract", whichever is applicable,

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished

annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Copies of the warehouseman's tariff and any changes thereto, and

(4) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1423.2(a)(2) and such other documents or information as CCC may require.

[44 FR 67081, Nov. 23, 1979, as amended at 45 FR 84009. Dec. 22, 1980; Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.2 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business.

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations.

(3) Have a net worth which is the greater of $25,000 or (i) for dairy and other processed commodities (other than those shown in paragraph (a)(3)(ii) of this section, the amount which results from multiplying five (5) percent of the current purchase price, times the quantity of the commodity to be stored; (ii) for honey, sugar and bulk oils, the amount which results from multiplying the storage capacity of the flat warehouse space available to CCC or the maximum capacity of the bulk tank(s), whichever is applicable, times five (5) percent of the current loan value for honey and sugar and five (5) percent of the current market value for bulk oils. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bonds (or acceptable substitute security) meeting the requirements of § 1423.3,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactory corrected, upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Use only warehouse receipts or such other documents as CCC may prescribe,

(7) Maintain accurate and complete inventory and operating records,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete loadout as stated below or as CCC may prescribe:

(i) Forty-five (45) working days of the total quantity of all honey and processed commodities stored for CCC.

(ii) Seventy-five (75) working days of that quantity of bulk oils for which the warehouse is or may be approved under a contract with CCC.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization technical qualifications, and skills in the warehousing business regarding the applicable commodity to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 days notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer, and

(3) Not be subject to greater than normal risk of fire, flood or other hazards.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.3 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than one hundred twenty (120) days or includes a rider providing for not less than one hundred twenty (120) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, 'Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

(Pub. L. 80-89, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.4 Examination of warehouses.

Except as otherwise provided in this subpart a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1423.5 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities, but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.7 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart, and no reasonable and economical alternative is available for securing such services, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1423, Subpart—Standards for Approval for Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Oils) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0052, 0560-0044, 0560-0064, 0560-0065, 0560-0034, and 0560-0041.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.
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1425.8 Conflict of interest.
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1425.21 Definitions.

AUTHORITY: Secs. 4 and 5, Pub. L. 80-806, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 105A, 107A, 201, 301, 401, Pub. L. 81-439, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444(f), 1444c, 1445b, 1446, 1447, 1421), unless otherwise noted.

SOURCE: 42 FR 36234, July 14, 1977, unless otherwise noted.

§ 1425.1 Applicability.

This subpart and any amendments thereto set forth the terms and conditions which a cooperative marketing association (hereinafter called "cooperative") must meet to obtain price support on behalf of its members for 1977 and any succeeding crop of a commodity. A cooperative meeting such terms and conditions may obtain price support on any crop of a commodity for which a price support program is in effect if regulations issued with respect to such program incorporate the provisions of this subpart or permit a cooperative which meets the provisions of this subpart to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

(a) *Responsibility.* The Price Support and Loan Division, ASCS, will administer the provisions of this subpart under the general direction and supervision of the Deputy Administrator, State and County Operations, in accordance with program provisions and policy determined by Commodity Credit Corporation. In the field, the provisions of this subpart will be administered by the State and county Agriculture Stabilization and Conservation committees, and where applicable, the Agricultural Stabilization and Conservation Service Commodity Office. As used in this Part, the term "CCC" means Commodity Credit Corporation and the term "ASCS" means the Agricultural Stabilization and Conservation Service.

(b) *Limitation of authority.* The authority conferred by this subpart to administer provisions contained herein does not include authority to modify or waive any of the provisions of this subpart.

[42 FR 36234, July 14, 1977, as amended at 43 FR 4590, Feb. 3, 1978]

§ 1425.3 Application.

(a) *Initial approval.* A cooperative which desires approval to obtain price support on any authorized 1977 and succeeding crop of a commodity shall submit an application for a determination of eligibility with respect to each of the commodities listed herein for which approval is sought. An application form and related questionnaire and a copy of the regulation appearing in this subpart may be obtained from the Director, Price Support and Loan Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Inquiries relating to such documents should also be addressed to the Director, Price Support and Loan Division. Applications with respect to each of the commodities listed herein and supporting material shall be submitted on or before the applicable date listed below of the calendar year in which the cooperative requests approval to participate in the price support program for commodities marketed thereafter, or by such later date as the Executive Vice President, CCC, may authorize to alleviate hardship.

Commodity	Date
Barley	June 1
Corn	Oct. 1
Cotton	Aug. 1
Honey	July 1
Oats	June 1
Rice	Aug. 1
Rye	June 1
Sorghum	Oct. 1
Soybeans	Sept. 1
Wheat	June 1

If price support program regulations for a commodity not listed herein require a cooperative to obtain approval under this subpart to be eligible for price support, the latest date for filing an application for approval with respect to such commodity shall be specified in such program regulations.

(b) *Information confidential.* Information submitted in connection with an application relative to trade secrets or financial or commercial operations or dealing with the financial condition of an applicant cooperative shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosure is necessary for the conduct of the price support program, and shall not be released where prohibited by law or regulation.

(c) *Approved cooperatives.* A cooperative shall be considered as an "approved cooperative" for the purposes of this paragraph (c) if:

(1) It is unconditionally approved to participate in a price support program with respect to the 1977 or any subsequent crop of a commodity; or

(2) It is conditionally approved to participate in a price support program with respect to the 1977 or any subsequent crop of a commodity and has satisfied the conditions of approval.

(d) *Term of approval.* A cooperative approved to participate in a 1977-crop price support program may participate in the price support program for such commodity until its approval is suspended by the Executive Vice President, CCC, or his designee, or terminated by the Executive Vice President, CCC.

(e) *Annual information.* Annually, the Director, Price Support and Loan Division shall request an approved cooperative to furnish: (1) An audit report to include any accompanying notes, schedules, or exhibits, certified by a certified public accountant as fairly representing the financial condition of the cooperative.

(2) A statement showing the total capital interest in the cooperative and the total capital interest in the cooperative owned by inactive and nonmembers by each separate category.

(3) The names of any active producer members and member cooperatives who own in excess of 10 percent of the capital of the cooperative and the amount owned by each.

(4) The quantity of each commodity delivered to the cooperative for marketing and the portion thereof that was received from active members.

(5) The quantity of each commodity tendered to CCC for loan and the quantity redeemed.

(6) The quantity of each commodity tendered to CCC for purchase.

(f) *Current information.* An approved cooperative shall furnish to the

Director, Price Support and Loan Division, immediately:

(1) Any changes in its articles of incorporation, bylaws, resolutions, or marketing agreement.

(2) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.8(d).

(3) Any change in pooling operations with an explanation of the change and why such change was necessary.

(4) Additional information as may be requested at any time in connection with its continued approval under this subpart.

(g) *Suspension.* A cooperative may be suspended by CCC from further participation in the price support program if it is determined that it has not operated in accordance with representations made in its application for approval, has not complied with the regulation, or has failed to bring into compliance deficiencies noted during an administrative review or an audit of its operations under a price support program. Such suspension may be lifted upon receipt of documents indicating that the cooperative complies with the provision of this subpart which served as the basis of the suspension.

(h) *Termination.* CCC shall have the right at any time, by giving the cooperative at least 5 days written notice, to terminate the right of the cooperative to tender commodities to CCC for loan and to mature all outstanding loans by making demand for payment by the date specified in such notice, which shall not be earlier than 10 days after such termination date. If the cooperative has loans outstanding, such loans shall be redeemed not later than such maturity date or title to the commodity shall, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value the commodity may have in excess of the amount of the loans, plus interest and charges.

(i) *Voluntary termination.* An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate its approval to participate in a price support program: ***Provided,*** That the cooperative does not have any outstanding loans at the time of voluntary termination.

[42 FR 36234, July 14, 1977, as amended at 42 FR 40188, Aug. 9, 1977; 43 FR 4590, Feb. 3, 1978]

§ 1425.4 Ownership and control.

The cooperative shall be owned and controlled by its active producer members and any bona fide cooperative members (hereinafter called "member cooperative").

(a) *Ownership.* The cooperative must establish that its active producer members and its member cooperatives which are owned and controlled by their active producer members, own a capital interest in the cooperative (i.e., stock, revolving fund certificates, book credits, or other equity interest) constituting more than 50 percent of the allocated capital of the cooperative. Ownership of a member cooperative by its active members shall also be determined in accordance with the provisions of this paragraph (a). In determining the requisite capital interest of active producer members and member cooperatives, the following shall be disregarded:

(1) The capital interest of any such member in excess of 10 percent of the capital of the cooperative; and

(2) The capital interest acquired by any such member as a result of a loan unless such member is obligated to repay the loan within a reasonable period of time.

(b) *Control.* The organization and operation of the cooperative shall be under the control of its active producer members and member cooperatives which are owned and controlled by their active producer members. A cooperative shall be considered so controlled if more than 50 percent of its membership consists of active producer members, or member cooperatives which are owned and controlled by their active producer members.

(1) A director shall be an active member, a representative of an active member serving in the capacity of a farm manager or its equivalent (including an officer of a corporation and a partner in partnership), or an officer or employee of a member cooperative

which is owned and controlled by its active members.

(2) A director shall be nominated and elected by active members except when selected to fill the unexpired term of a director so elected.

(c) *Approved plan.* Notwithstanding the foregoing provisions of this section, a cooperative which presently has a plan approved by CCC for retiring equities owned by inactive members may continue operating under the approved plan even though active members do not control or own more than 50 percent of its capital interest of the cooperative. If an applicant cooperative or an approved cooperative is determined not to be under the control, or ownership, or both, of its active members, the cooperative may be approved to participate in the price support program if the cooperative submits, and the Executive Vice President, CCC, approves, a plan for retiring the capital interest of its inactive members so that such ownership and control will be invested to its active members within a reasonable period of time. Nevertheless, ownership and control of such a cooperative must be invested in its members and member cooperatives.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101(i), 103(g), 105B, 107B, 201, 301, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441(i), 1444(g), 1444d, 1445b, 1446, 1447, 1421))

[42 FR 36234, July 14, 1977, as amended at 47 FR 46678, Oct. 20, 1982]

§ 1425.5 Charter or bylaw provisions.

The articles of incorporation or association, the bylaws of the cooperative, shall provide for each of the requirements of this section.

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meetings.* Each member or delegate, as the case may be, shall be given written notice of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who (1) applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative, except that the cooperative may refuse admission to an applicant on its findings, based on reasonable grounds, that the applicants admission would prejudice the interests or hinder or otherwise obstruct the purposes of the cooperative.

(d) *Nominations.* Nominations shall be made as follows:

(1) Nominations for election of delegates and directors shall be made by secret balloting, nominating committee, petition of members, or from the floor; and,

(2) Nominations for election of officers shall be made by elected directors by secret balloting, nominating committee, or from the floor.

If directors are nominated by a nominating committee or by petition, members of the cooperative shall be permitted to nominate directors from the floor at the membership meeting for the election of directors. If delegates are nominated by a nominating committee or by petition, members of the cooperative shall be permitted to nominate delegates from the floor at the membership meeting for the election of delegates. If officers of the cooperative are nominated by nominating committee, any member of the board of directors shall be permitted to make nominations from the floor at the meeting for election of officers.

(e) *Balloting.* Election of directors, delegates and officers shall be by balloting when there are two or more nominees for a position to be filled or more nominees than there are positions to be filled, as applicable.

(f) *Voting rights.* Each active member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member, except that the Executive Vice President, CCC, may in his discretion approve some other voting method which in his opinion will adequately protect the interests of the active members of the cooperative.

Any approved cooperative which has issued, prior to the effective date of this amendment, voting stock to persons other than active members as permitted by its articles of incorporation or bylaws and applicable State law shall be exempt, as long as such stock is outstanding, from the "active" member restriction with respect to voting rights as provided for in this paragraph.

(g) *Proxy or power of attorney.* Voting by proxy or under power of attorney shall not be permitted, except that voting by proxy or under power of attorney may be permitted in order to amend the articles of incorporation and bylaws of a cooperative if the cooperative seeking to hold such vote establishes to the satisfaction of the Executive Vice President, CCC, that the law of the State in which the cooperative is incorporated does not permit members to vote by mail on this issue and does permit voting by proxy or power of attorney.

(h) *Financial statement.* Each member shall be given each year a summary financial statement based on an annual audit by a certified public accountant of the books and accounts of the cooperative.

[42 FR 36234, July 14, 1977, as amended at 45 FR 31700, May 14, 1980]

§ 1425.6 Financial condition.

(a) *Financial ability.* A cooperative shall be financially able to make advances to its members and to market their commodity. It shall submit with its application evidence establishing that its operation is on a financially sound basis.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include, but are not limited to, the following:

(1) The ability of the cooperative to meet its current obligations, including the expenses of marketing the commodity of its members;

(2) The ability of the cooperative to make advances to its members, either from its own funds or through arrangements with financial or other institutions;

(3) The ownership of an amount of net worth of the cooperative by its producer members and member cooperatives which is equal to the product of the amount per unit for a commodity (as shown below) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operation, the estimated quantity of such commodity that it will handle during such year: *Provided,* That if a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, the Executive Vice President, CCC, may establish the unit total of a commodity to be used in determining the adequacy of the cooperative's net worth owned by the cooperative's producer members and member cooperatives.

Commodity	Unit	Amount per unit
Barley	Bushel	$0.10
Corn	Bushel	.10
Cotton	Bale	5.00
Honey	Hundredweight	1.00
Oats	Bushel	.10
Rice	Hundredweight	.40
Rye	Bushel	.10
Sorghum	Hundredweight	.15
Soybeans	Bushel	.30
Wheat	Bushel	.10

If the amount of the net worth of the cooperative which is owned by producer members and member cooperatives is less than, but at least 34 percent of, the amount computed as set forth above, and the cooperative is considered to be otherwise financially sound, the Executive Vice President, CCC, may determine that the operation of the cooperative is on a financially sound basis if the board of directors of the cooperative agrees to make a capital retain in the amount set forth below with respect to each unit of the commodity delivered to the cooperative by producers until such time as the net worth owned by producer members and member cooperatives is at least equal to the amount per unit provided for above, and the cooperative also agrees to deduct the full amount of the estimated expenses of handling each bale of cotton received by the cooperative.

Commodity	Unit	Amount per unit
Barley	Bushel	$0.05
Corn	Bushel	.05
Cotton	Bale	2.50
Honey	Hundredweight	.50
Oats	Bushel	.05
Rice	Hundredweight	.20
Rye	Bushel	.05
Sorghum	Hundredweight	.10
Soybeans	Bushel	.15
Wheat	Bushel	.05

The failure to carry out such an agreement shall be grounds for terminating a cooperative's approval.

(4) Any pledge of assets as security, or, the deposit or setting aside of funds or other assets to secure or guarantee any indebtedness of the cooperative, or setting aside or deposit of funds in a restricted account to guarantee the performance of an obligation of the cooperative which is not reflected in the liability of the cooperative in the financial statement. If any assets or funds have been so pledged, set aside or deposited, and the amount of such indebtedness or guarantee is not shown in the financial statement as a liability, the amount of net worth to be used in making the determination of financial responsibility will be reduced by the value or amount of such assets or funds.

(5) The quantity of the commodity for which approval is sought which was handled by the cooperative during the preceding marketing year or, if the cooperative is new, the estimated quantity it will handle during the first marketing year of operation.

(c) *Information required.* The cooperative shall submit with its application the following information:

(1) A current financial statement prepared by a certified public accountant from the books of original entry and certified by the certified public accountant as fairly representing the financial condition of the cooperative.

(2) A statement showing the capital interest in the cooperative (stock, revolving fund certificates, book credits, or other equity interest) owned by its active producer members and its member cooperatives.

(3) A list of names of its producer members and member cooperatives which own in excess of 10 percent of the capital of the cooperative and the amount of the capital interest which each such producer member and member cooperative owns. If no such producer member or member cooperative owns in excess of 10 percent of the capital of the cooperative, a statement to this effect must be submitted; and

(4) A list of producer members or member cooperatives, who, to the knowledge of the cooperative, acquired a capital interest in the cooperative as a result of a loan which the producer member or member cooperative is not obligated to repay, and a copy of the note or other evidence of indebtedness securing such loan. If none of the capital interest of the cooperative is acquired as a result of such a loan, a statement to this effect must be submitted.

[42 FR 36234, July 14, 1977, as amended at 42 FR 40188, Aug. 9, 1977]

§ 1425.7 Operations.

A cooperative shall establish to the satisfaction of the Executive Vice President, CCC, that, with respect to the commodity for which approval is required, it is so organized and staffed by individuals employed directly by it that it is able to perform its contracts with its members and to provide an effective marketing operation for its members, except that a cooperative need not be staffed to perform such marketing services if:

(a) *Agreement.* The cooperative enters into an agreement with another cooperative marketing association to market the commodity;

(b) *Legal.* Such agreement is permitted by law;

(c) *Authorized.* The charter or bylaws of the cooperative acquiring the marketing service and the marketing agreement with its members contain necessary authority to enter into the agreement.

(d) *Member.* The cooperative acquiring the marketing service is a member of the cooperative marketing association which will provide the marketing service;

(e) *Approved.* The cooperative marketing association to provide the marketing service has been approved under this subpart to obtain price support for such commodity: and,

(f) *Best interest.* It is established to the satisfaction of the Executive Vice President, CCC, that such agreement is in the best interest of the members of the cooperative acquiring the marketing service.

[42 FR 36234, July 14, 1977, as amended at 45 FR 31700, May 14, 1980]

§ 1425.8 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be eligible for price support unless it establishes to the satisfaction of CCC that its transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with its application a detailed report concerning all of its transactions with the following persons during the year preceding the date of its application, or the date such information is required to be submitted under § 1425.3(a), as applicable, except for those transactions which do not differ from transactions entered into by the cooperative with its general membership:

(1) With any director, officer, or principal employee of the cooperative or with any of his close relatives;

(2) With any partnership from which any person described in paragraph (b)(1) of this section is entitled to receive a percentage of the gross profits;

(3) With any corporation in which any person described in paragraph (b)(1) of this section owns stock;

(4) With any business entity from which any such person described in paragraph (b)(1) of this section receives fees for transacting business with or on behalf of the cooperative; or

(5) With any business entity in which an agent, director, officer, or employee of the cooperative was an agent, director, officer, or employee of such business entity.

A close relative means a husband or a wife or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship. The report shall include, but is not limited to, transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragraph (b) of this section are contemplated in the period between the date of the application, or the date such information is required to be submitted under § 1425.3(a), as applicable, and the end of the next marketing year for the commodity. If any such transaction is contemplated, the cooperative shall submit a detailed explanation of such contemplated transaction(s) and a statement of the reasons therefor.

(d) *Directors, officers, and employees.* The cooperative shall furnish information annually showing the interest or connection of its directors, officers, and principal employees and their close relatives with persons who engage in business relating to a commodity for which the cooperative is approved to obtain price support.

§ 1425.9 Uniform marketing agreement.

Any quantity of a commodity on which price support is obtained and any other quantity of such commodity, which is included in the same pool with a quantity of the commodity on which price support is obtained, must be delivered to the cooperative by its members for marketing pursuant to a uniform marketing agreement between the cooperative and each of its members who delivered such commodity to the cooperative. A cooperative may provide alternative methods of marketing in addition to any set forth in its marketing agreement if the terms and conditions thereof are reasonable and information concerning such methods of marketing and how to exercise available options are made available to all active members. In addition, when authorized by CCC, an approved cooperative may offer additional marketing methods on a pilot (limited membership) basis for up to two crop years before making such marketing available to all members. If the pilot marketing method is adopted as a permanent marketing method by the cooperative, information concerning the method and how to participate in it shall be made available to all active members. Such information may be published in the cooperative's membership publication or included in other written notices mailed to all active members.

[45 FR 47837, July 17, 1980]

§ 1425.10 Purchased and nonmember commodity.

Any commodity purchased from members who do not retain the right to share in the proceeds from marketing of such commodity as provided in §§ 1425.13 and 1425.14 and any commodity acquired from nonmembers is not eligible for price support.

§ 1425.11 Member business.

If price support is sought for a particular crop of a commodity, not less than 80 percent of such crop of the commodity that is acquired by or delivered to the cooperative for marketing must be produced by its members or by members of its member cooperatives. However, the Executive Vice President, CCC, or an authorized designee, may, for a period of two years or such lesser period of time as he determines appropriate, authorize a cooperative to acquire or receive for marketing from its members a quantity smaller than 80 percent of such crop, if that quantity has a value greater than the value of the quantity acquired or received from nonmembers for marketing, and if the cooperative establishes to the satisfaction of the Executive Vice President, CCC, that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of the members of the cooperative. Purchases of commodities from CCC and processed products from other processors or merchandisers shall not be considered in determining the volume of member and nonmember business.

[46 FR 20150, Apr. 4, 1981]

§ 1425.12 Vested authority.

The cooperative shall have authority to obtain a loan on the security of the commodity delivered to it by its members, to give a lien on such commodity, and to sell such commodity. A cooperative which markets a commodity for its members pursuant to a marketing agreement containing the authorities recited in this section shall be eligible to obtain price support for the commodity on behalf of its members even though the individual members retain the right in effect, to determine the price at which the commodity can be marketed by the cooperative.

[45 FR 48103, July 18, 1980]

§ 1425.13 Eligible commodity and pooling.

(a) *Commingled commodity.* The cooperative may obtain price support on a quantity of commodity stored commingled in approved warehouses not to exceed the smaller of (1) the quantity of commodity eligible for price support received from eligible members, or (2) the quantity of such commodity remaining undisposed of in the pool eligible for price support: *Provided,* That the cooperative at all times shall have a quantity of such commodity in inventory of each class and grade at least equal to the quantity of that commodity of each class and grade under loan.

(b) *Identity preserved.* The cooperative may obtain price support only on the eligible commodity received from eligible members which remains undisposed of in its inventory at the time such commodity is offered as security for a loan or is offered for purchase when such commodity is stored identity preserved in approved warehouses.

(c) *Pools.* The cooperative may establish separate pools as needed for quantities of a commodity acquired from members. If the cooperative obtains price support from CCC on any quantity of a commodity included in a pool, all of the commodity included in the pool must be eligible for price support, except that a part of a pooled commodity may be ineligible for price support because of grade or quality, or in the case of cotton, because of bale weight or being repacked: *Provided, however,* That: (1) Any commodity delivered to a cooperative by producer members who have not accepted a payment of the initial advances made available to them by the cooperative for the commodity under § 1425.14(a) shall not be included in the eligible pool until the producer agrees to receive payment of loan proceeds less authorized charges as provided for in such paragraph; and (2) farm-stored commodities cannot be included in an eligible pool until they are physically delivered to the cooperative and deposited in an approved warehouse.

(d) *Commodity requirements.* The commodity offered for price support must:

(1) Have been produced by an eligible producer on a farm on which the production of such commodity is eligible for price support under the applicable price support program regulations;

(2) Meet the eligibility requirements for making price support available to the cooperative under applicable price support program regulations; and

(3) Have been delivered to the cooperative for marketing for the benefit of producer members or by member cooperatives in behalf of their producer members.

(e) *Allocation of costs and expenses.* If price support is obtained on any quantity of a crop of a commodity in a pool, allocations of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(f) *Losses.* (1) Any losses incurred by the cooperative in marketing a crop of a commodity for which price support is not obtained from CCC shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which price support was obtained. Except as provided in paragraph (f)(2) of this section, pool losses incurred by the cooperative in marketing a crop of a commodity for which price support is obtained may not be carried forward and applied against subsequent eligible pools on which price support is obtained.

(2) The Executive Vice President, CCC, or an authorized designee, may authorize an approved cooperative to carry forward losses incurred on an eligible pool of a crop of a commodity when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program. This authorization will be approved on the basis of a plan for the carrying forward of losses as submitted to CCC by an approved cooperative. The authorization will be continued on the condition that the approved cooperative remains in substantial compliance with the plan, as reflected in periodic progress reports. Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by the Executive Vice President, CCC, under the criteria specified in this paragraph. Factors which must be considered in such a plan include, but are not limited to, the following: (i) The stability of membership and participation between affected pools; (ii) the financial condition of the cooperative; and (iii) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period. The plan must also include the following: (i) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (ii) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by the Executive Vice President, CCC.

[42 FR 36234, July 14, 1977, as amended at 45 FR 31701, May 14, 1980; 46 FR 20150, Apr. 3, 1981; 46 FR 30328, June 8, 1981; 47 FR 15764, Apr. 13, 1982]

§ 1425.14 Distribution of proceeds.

(a) *CCC loans and purchases.* If price support is obtained on any part of the commodity in a pool through CCC loans or purchases, the proceeds therefrom shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member less any authorized charges for services performed by and/or paid for by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within a period of 15 days from the date of receipt from CCC. However, if the cooperative has distributed initial advances to members in the eligible pool at the time it acquires the commodity and which advances equal not less than such proceeds less authorized charges, a further distribution shall not be required.

(b) *Pool distribution.* If price support is obtained from CCC on any part of the commodity in a pool, the proceeds of such pool shall be distributed only to members participating in such pool ratably on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool on which price support has been obtained, shall not be combined with proceeds from ineligible pools for distribution and final settlement. The cooperative shall submit with its application a detailed description of the method by which proceeds from a pool on which price support is obtained will be distributed. The method of distribution shall be as provided in the marketing agreement with members or in the bylaws.

(c) *Unclaimed funds.* A cooperative which has attempted to distribute a part of its capital interest (as defined in § 1425.4(a)) in accordance with its articles of incorporation and bylaws to producer members described in paragraph (b) of this section and has given notice of such distribution both by publication and personal letter addressed to such members, may provide for reallocation of such undistributed capital interest, to the extent permitted by the law of the State applicable to such distribution, to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run commencing on the date the capital interest was declared to be payable by the cooperative;

(2) The cooperative, prior to the lapse of such period of limitation, has given the affected member a 30-day notice of the expiration of such period of the amount payable to him by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative; and

(3) No claim for payment of such capital interest is made within the period of limitations described above.

[42 FR 36234, July 14, 1977, as amended at 43 FR 4590, Feb. 3, 1978]

§ 1425.15 Member cooperatives.

(a) *Obtains price support.* If a cooperative obtains price support from CCC on any quantity of a commodity delivered by a member cooperative or if the cooperative obtains price support from CCC on any quantity of the commodity included in the same pool with the production delivered by such member cooperative, the cooperative and such member cooperative must meet the requirements of paragraphs (a) (1), (2), and (3) of this section.

(1) The commodity delivered by the member cooperative must have been produced by its members; and the member cooperative must have authority to deliver such commodity to the cooperative for marketing. Also, each such member cooperative must have authority to sell the commodity produced and delivered to such member cooperative by its members, obtain a loan on the security thereof, and give a lien thereon.

(2) In its charter, bylaws, marketing agreement, or by other legal means, the cooperative must require each such member cooperative to meet the requirements of this subpart.

(3) The cooperative must determine that each such member cooperative is eligible for price support under this subpart and must so certify to CCC.

(b) *Comply with State law.* The cooperative shall determine and certify to CCC that its member cooperatives which are not subject to paragraph (a) of this section comply with the producer ownership, membership meeting and voting requirements of applicable State law.

(c) *Exception.* Notwithstanding the foregoing provisions of this section, an approved cooperative is required to meet only the provisions contained in the first sentence of paragraph (a)(1) of this section with respect to a member cooperative for whom it markets the production of its producer members under § 1425.7.

§ 1425.16 Nondiscrimination.

The cooperative shall not, on the ground of race, color, sex, or national origin, deny any producer the benefits of, exclude any producer from participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1 to 15.12 of this title (29 FR 16274 and 38 FR 17925), and any amendments thereto. The cooperative agrees that the United States shall have the right to enforce compliance with such statute and regulations by suit or by any other action authorized by law. The cooperative shall submit a certification with its application that the above cited regulations have been read and understood and that the cooperative shall abide by them.

§ 1425.17 Records maintained.

(a) *Acquisitions.* An approved cooperative, and its member cooperatives, described in paragraph (a) of § 1425.15, if any, shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade and quality where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity disposed of, the date sold, the date shipped and the price received in the following manner:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted when the commodity is withdrawn from inventory and is processed.

(2) *Commodities not processed.* The commodity shall be allocated to an eligible pool, an ineligible pool, or both eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

The commodity shall be allocated to eligible or ineligible pools or a combination of eligible and ineligible pools in the above manner until the entire inventory in a particular pool is depleted.

(Approved by the Office of Management and Budget under control number 0560-0040)

[42 FR 36234, July 14, 1977, as amended at 45 FR 31701, May 14, 1980; 47 FR 745, Jan. 7, 1982]

§ 1425.18 Inspection and investigation.

(a) *Inspection.* The books, documents, papers, and records of the approved cooperative, and its member cooperatives, if any, for any year's business shall be available to CCC for inspection and examination at all reasonable times through the end of the fifth marketing year following the marketing year in which price support for the crop was available.

(b) *Investigation.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and records of the cooperative and its member cooperatives and to make such investigations as are deemed necessary to determine whether the cooperative and its member cooperatives, if any, are operating or have operated in accordance with the regulations in this subpart, their articles of incorporation or association, bylaws, agreements with producers, representations made by the cooperative in its application for approval and, where applicable, its agreements with CCC.

§ 1425.19 Determination of eligibility.

The determination under this subpart of a cooperative marketing association's eligibility to obtain price support shall be made by the Executive Vice President, CCC, or his designee.

§ 1425.20 Substantial compliance.

(a) *Conditional approval.* Notwithstanding the foregoing provisions of this part, if the Executive Vice President, CCC, or his designee, determines that a cooperative has not met all of the eligibility requirements of this subpart but has substantially complied with such requirements, or has met substantially all such requirements, he may approve the cooperative for participation in the price support program if the cooperative agrees in writing to meet all of the eligibility requirements of this subpart prior to the beginning of the marketing year for which approval is then being sought. Board resolutions agreeing to comply with provisions of this subpart may be accepted by the Executive Vice President, CCC, as substantial compliance with such provisions for purposes of this section. Any approved cooperative which, without fault or negligence, fails to comply with requirements of this subpart which can be met for the current marketing year only by calling a special membership meeting may continue to be approved for participation in the price support program for the current marketing year if it agrees to undertake to have its members at its next regular membership meeting take the action necessary to comply with such program requirements.

(b) *Interim approval.* For 1977 crop participation, the Executive Vice President, CCC, or his designee, may grant an interim approval to a cooperative making initial application. An interim approval may be granted when time required for processing applications will delay a cooperative obtaining approval in time to provide for maximum utilization of the price support program. An interim approval may be granted only if the directors of the applicant cooperative furnish a resolution agreeing to comply with all requirements of the regulations when notified of any deficiencies. A cooperative's interim approval shall be terminated if it fails to take action necessary to fully comply when notified of deficiencies. Time allowed for correction shall not exceed 60 days from date of notification unless the cooperative establishes to the satisfaction of the Executive Vice President, CCC, or his designee, that additional time is needed. In the event an interim approval is terminated and the cooperative has loans outstanding, CCC shall have the right to mature such loans not earlier than 10 days from the date of notice of termination. If the cooperative has loans outstanding, such loans shall be redeemed not later than such maturity date or title to the commodity shall, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value the commodity may have in excess of the amount of the loans, plus interest and charges.

§ 1425.21 Definitions.

(a) *Person.* As used in this subpart the term "person" shall have the meaning of such terms as defined in the regulation pertaining to Reconstitution of Farms and Allotments, Part 719 of this title and any amendments thereto.

(b) *Member.* The term "member" shall mean a person who has met all of the requirements as specified in the articles of incorporation and/or bylaws, including full payment of the required membership stock or fees, either in cash or earned equity credits, is accepted by the cooperative and is entitled to all membership rights including voting and holding office.

(c) *Active member.* The term "active member" shall mean a member of a cooperative who has utilized the services offered by a cooperative for marketing his commodity or purchasing production supplies for his farming operation in one of the three preceding crop years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

[42 FR 36234, July 14, 1977, as amended at 45 FR 31701, May 14, 1980]

PART 1427—COTTON

Subpart—Cotton Loan Program Regulations

Sec.
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Subpart—Cotton Loan Program Regulations

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); sec. 602, 91 Stat. 934, as amended (7 U.S.C. 1444).

SOURCE: 45 FR 44294, July 1, 1980, unless otherwise noted.

§ 1427.1 General statement.

The regulations in this subpart, including any amendments and notices published in the FEDERAL REGISTER, set forth the requirements with respect to price support loans on cotton of the 1980 crop and each subsequent crop of cotton. Price support loans will be made available by CCC to eligible cotton producers on eligible upland and extra long staple cotton. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation, and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

[46 FR 47059, Sept. 24, 1981]

§ 1427.2 Definitions.

As used in the regulations in this subpart, and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them therein unless the context or subject matter otherwise requires.

(a) "Person", "State Executive Director", "County Executive Director", and "farm", respectively, shall each have the same meaning as the definition of such term in Part 719 of this title and any amendment thereto.

(b) "Kansas City Management Office" shall mean the Kansas City Management Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Kansas City Commodity Office" shall mean the Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) "State committee" shall mean the Agricultural Stabilization and Conservation State Committee and shall include only the State committee and not its representative.

(e) "County committee" shall mean the Agricultural Stabilization and Conservation county committee and shall include only the county committee and not its representative.

(f) "Loan clerk" shall mean a person approved by CCC to assist producers in preparing loan documents.

(g) "Charges" shall mean all fees, costs, and expenses paid by CCC incident to insuring or reinsuring, reconcentrating, carrying, handling, storing, conditioning, and otherwise protecting the interest in the loan collateral of CCC and the producer.

(h) "Financial institution" shall mean (1) a bank in the United States which accepts demand deposits, (2) an association organized pursuant to State law and supervised by State banking authorities, or (3) a production credit association.

(i) "False-packed", "water-packed", "mixed-packed", "reginned", and "repacked" cotton shall each have the same meaning as the definition of such term in Part 28 of this title and any amendment thereto.

(j) "Authorized agent" shall mean a person or firm under written agreement with CCC and designated by a producer to be agent as provided at § 1427.11(f) in executing loan documents, to obtain Form A cotton loans and repay such loans through a central county ASCS office.

(k) "Authorized LSA" shall mean a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, certain CCC cotton loanmaking services specifically prescribed by CCC including: (1) Preparing and executing loan documents, (2) disbursing loan proceeds, (3) handling the extension of loans as authorized by CCC, (4) accepting cotton loan repayments, (5) handling documents involved with forfeiture of cotton loan collateral to CCC, and (6) providing loan data to CCC for statistical purposes.

(l) "Cotton" shall mean upland cotton and extra long staple cotton.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52215, Dec. 23, 1985]

§ 1427.3 Administration.

(a) *Responsibility.* The Cotton, Grain, and Rice Price Support Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees (hereinafter called "State and county committees") the Kansas City Commodity Office, and the Kansas City Management Office.

(b) *Documents.* (1) Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called "county office") designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approved documents under this program except where otherwise specified in the regulations in this subpart. County committees or county executive directors also may approve loan clerks at convenient locations to assist producers in preparing loan documents.

(2) Authorized LSAs may execute and approve documents under this program as specifically authorized by CCC.

(c) *Limitation of authority.* County executive directors, State and county committees, the Kansas City Commodity Office, Kansas City Management Office and authorized LSAs do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(d) *State committee.* The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also (1) correct or require a county committee to correct any actions taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the applicable regulations in this subpart.

(e) *Executive Vice President, CCC.* No delegation herein to a State or county committee, the Kansas City Commodity Office, or the ASCS Management Field Office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee, the Kansas City Commodity Office, or the ASCS Management Field Office.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52215, Dec. 23, 1985]

§ 1427.4 Eligible producer.

(a) *Producer.* An eligible producer is any individual, partnership, corporation, association, trust, estate, or other legal entity, a State or political subdivision thereof, or any agency of such State or political subdivision producing eligible upland or extra long staple cotton in the capacity of landowner, landlord, tenant, or sharecropper. If eligible cotton is produced on a farm by a landlord and a share tenant or sharecropper, a price support loan may be obtained only as follows:

(1) If the cotton is divided among the producer's entitled to share in such cotton, each landlord, tenant, or sharecropper may obtain a loan on the producer's separate share.

(2) If the cotton is not divided, all producers having a share in the cotton may obtain a joint loan on such cotton.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a financially responsible person; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§ 1427.5 Eligible cotton.

Cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) Such cotton must have been produced on a farm by a producer who has complied with the price support eligibility requirements, if any, specified in Parts 713, 718, 791, and 792 of this title. The cotton in any bale may have been produced by two or more producers on one or more farms if the bale is not a repacked bale.

(b) Such cotton must be tendered for a loan within the availability period provided for in § 1427.6(d).

(c) Such cotton must be of a grade and staple length specified in: (1) The schedule of premiums and discounts for upland cotton or (2) the schedule of loan rates for extra long staple cotton, as published annually in a notice in the FEDERAL REGISTER and must be represented by a warehouse receipt meeting the requirements of § 1427.12.

(d) Such cotton must not be false-packed, water-packed, mixed-packed, reginned, or repacked; upland cotton must not have been reduced more than two grades because of preparation; extra long staple cotton must have been ginned on a roller gin, must not have a micronaire reading of 2.6 or less, and must not have been reduced in grade for any reason.

(e) Such cotton must be in existence and in good condition.

(f) Such cotton must not be compressed to universal density where side pressure has been applied or to high density at a warehouse.

(g) The producer or cooperative marketing association tendering the cotton for a loan must have the legal right to pledge it as security for a loan.

(h) Such cotton must not have been produced on land owned by the Federal Government if such land is occupied without a lease, permit, or other right of possession.

(i) The producer or cooperative marketing association tendering such cotton must not have previously sold and repurchased such cotton or placed it under CCC loan and redeemed it.

(j) Each bale of cotton must weight not less than 325 pounds net weight.

(k) Cotton which has been compressed to standard or higher density, either at a warehouse or at a gin, must have not less than eight bands.

(l) Each bale must be packaged in materials which meet the specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1985 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available to the public upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Informaion with respect to experimental packaging material may be obtained from JCIBPC.

(m) Each bale must be ginned by a ginner (1) who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and (2) who has entered into CCC-809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (l) of this section.

(n) Such cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan.

(o) The beneficial interest in the cotton must be in the producer tendering the cotton for a loan (or in the producer-member delivering the cotton to the cooperative marketing association which tenders the cotton for a loan) and must have always been in the producer or in the producer and a former producer whom the producer succeeded before it was harvested. To meet the requirements of succession to a former producer, the right, responsibilities, and interest of the former producer with respect to the farming unit on which the cotton was produced shall have been substantially assumed by the person claiming succession. Mere purchase of the crop prior to harvest without acquisition of any additional interest in the farming unit shall not constitute succession. The county committee shall determine whether the requirements with respect to succession have been met. The producer's beneficial interest in cotton shall not be considered to have been divested if the producer enters into a contract to sell, or gives an option to buy, the cotton if, under the contract or option, the producer retains control and risk of loss of and title to the cotton and retains control of its production.

(p) If the person tendering cotton for a loan is a landowner, landlord, tenant, or sharecropper, the cotton must be such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been received in payment of fixed or standing rent.

(q) Each bale of upland cotton sampled by the warehouseman upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

[45 FR 44294, July 1, 1980, as amended at 46 FR 47060, Sept. 24, 1981; Amdt. 5, 50 FR 26979, July 1, 1985; Amdt. 6, 50 FR 52215, Dec. 23, 1985]

§ 1427.6 Program availability and disbursement of price support loans.

(a) *Where to request a loan.* (1) A producer may request price support: (i) At the local county ASCS office, or (ii) from an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by producers to obtain loans on their behalf may obtain such loans through a central county ASCS office designated by CCC.

(3) An approved cooperative marketing association must request loans: (i) At a servicing bank approved by CCC, or (ii) at the county ASCS office for the county in which the principal office of the cooperative is located unless the State ASC committee designates some other county ASCS office as the office where such association must request price support.

(b) *Disbursement of loans.* Disbursement of loans to individual producers may be made by: (1) Local county ASCS offices, (2) authorized LSAs, or by (3) central county ASCS offices (when designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC). Loans may be disbursed by approved servicing banks to approved cooperative marketing associations. Service charges and cotton research and promotion fees, when required by the provisons of 7 CFR 1205.500 *et seq.*, will be deducted from the loan proceeds. If the producer so elects, loan clerk fees may be deducted from the loan proceeds instead of the loan clerk being paid in cash. The loan documents shall not be presented for disbusement unless the commodity covered by the mortgage or pledge of security is in existence and in good condition. If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Program availability.* Loans will be available to eligible producers on cotton represented by warehouse receipts which is stored at CCC approved warehouses.

(d) *Period of availability of loans.* Producers may request loans on a corp of cotton from the beginning of harvest of the crop through May 31 following the calendar year in which such crop is grown. Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cotton A and within the period of loan availability. Whenever the final date of availability falls on a nonworkday for county ASCS offices, the applicable final availability date shall be extended to include the next workday.

[Amdt. 6, 50 FR 52215, Dec. 23, 1985]

§ 1427.7 Maturity of loans.

(a) *Time of maturity and extension of loans.* Loans on Form A cotton as referred to in § 1427.11(a) (and loan advances to cotton cooperative marketing associations on Form G cotton) mature on the last day of the 10th calendar month from the first day of the month in which the loan (or loan advance) is made, or upon such earlier date as CCC may make demand for payment, except that whenever such data falls on a nonworkday for county ASCS offices, the date of maturity shall be the next workday. Upland cotton loans may at the producer's request be extended for an additional eight (8) months during the 10th month of the initial loan provided the average spot market price for Strict Low Middling $1\frac{1}{16}$ inch cotton during the ninth month of the loan did not exceed 130 percent of the average spot market price for Strict Low Middling cotton for the preceding 36 months. CCC may, by public announcement, extend the time for repayment of the loan indebtedness or carry the loan in a past due status.

(b) *When CCC takes title to commodity.* On or after maturity and nonpayment of the note, title to the cotton shall, at CCC's election, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton securing the loan as of the date title vests in CCC, as determined by CCC.

(c) *Sale by CCC.* Upon maturity and nonpayment of a note, CCC is authorized without notice to the producer to sell, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, interest, and charges, shall be paid to the producer or to the producer's personal representative without right of assignment to or substitution of any other person. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the proceeds received from the sale of the cotton shall be credited by CCC against the amount due on the loan, and the producer shall be personally liable for any balance due on the loan.

(d) *Small amounts.* To avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less will be paid to the producer only upon the producer's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.8 Weight, loan rate, and amount of loans.

(a) *Weight.* Loans will be made on the net weight of the cotton as shown on the warehouse receipt, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Notes for loans on cotton pledged on reweights will not be accepted if CCC determines that such reweights reflect an increase in weight due to the absorption of moisture.

(b) *Loan rate for upland cotton.* (1) The base loan rate for strict low middling $1\frac{1}{16}$ inch upland cotton of each crop at each approved warehouse location will be stated in the schedule of base loan rates for upland cotton by warehouse locations and published annually in a notice in the FEDERAL REGISTER. The schedule will be available at county ASCS offices.

(2) The premium or discount applicable to each other eligible grade and staple length of upland cotton of each crop and the discount, if any, for each micronaire reading will also be published annually in a notice in the FEDERAL REGISTER.

(c) *Loan rate for ELS cotton.* Loan rates and micronaire discounts, if any, for extra long staple cotton of each crop will be contained in the supplement to this subpart for such crop.

(d) *Amount of loans.* The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section by the applicable loan rate, as determined under paragraph (b) of this section, and subtracting any unpaid warehouse receiving charges, any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.12(c), and any unpaid charge for furnishing new bale ties as prescribed in § 1427.12(c). CCC will not increase the amount loaned on any bale of cotton as a result of a redetermination of the quality of the bale after it is tendered to CCC and will not increase the amount loaned as a result of any redetermination of weight after the cotton is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made in the weight of the bale or the loan rate for the bale on the Form A-1, such error may be corrected. In establishing the correct weight of the bale, CCC will deduct from the current weight of the bale any estimated weight gained while in storage.

[45 FR 44294, July 1, 1980, as amended at 46 FR 47060, Sept. 24, 1981]

§ 1427.9 Classification and micronaire readings of cotton.

(a) References made to "classification" in this subpart shall include micronaire readings. All cotton tendered for loan must be classed by a USDA, AMS, Marketing Services Office (referred to in this subpart as "the Marketing Services Office") and tendered on the basis of such classification. A Cotton Classification Memorandum Form 1 showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples for organized improvement groups under the Smith-Doxey program. If the producer's cotton has not been sampled for a Form 1 classification, the warehouse shall sample such cotton and forward the samples to the Marketing Services Office serving the district in which the cotton is located. Such warehouse must be licensed by the Agriculture Marketing Service, U.S. Department of Agriculture, to draw samples for submission to the board. If a sample has been submitted for a Form 1 or Form A classification, another sample shall not be drawn and forwarded to a board except for a review classification. Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value. The classification Form 1 or Form A must be dated not more than 15 days prior to the date the warehouse receipt was issued (State committees may in arid regions extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period), otherwise a new sample must be drawn and a review classification based on the new sample will be required. If a Form 1 or Form A review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

(b) The applicable classification charge shall be collected from the producer by the warehouse for all cotton for which samples are submitted to a board for a Form A review classification. The board will bill the warehouse at the end of each month for such charges. Payment of these bills shall be made by check or money order payable to "Commodity Credit Corporation" and mailed to the Kansas City Commodity Office.

§ 1427.10 Approved storage.

Except as provided otherwise in § 1427.19, cotton will be accepted as security for loans only if stored at warehouses approved by CCC. When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within the warehouse. Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office. The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices. Storage charges paid by a producer to CCC as security for a loan will not be refunded by CCC. If cotton is redeemed from the loan, the person removing the cotton from storage shall pay all unpaid warehouse charges at the established tariff rate.

§ 1427.11 Applicable forms.

The forms for use in connection with this program shall be as follows:

(a) Cotton producer's Note and Security Agreement, Form CCC Cotton A (referred to in this subpart as "Form A").

(b) Schedule of Pledged Cotton, Form CCC Cotton A-1 (referred to in this subpart as "Form A-1").

(c) Warehouse receipts complying with the provisions of § 1427.12.

(d) Cotton Classification Memorandum, Form 1 or Form A3, for each bale showing the classification (including micronaire reading) assigned by a board of examiners of the U.S. Department of Agriculture.

(e) Lien Waiver, Form CCC-679 (referred to in this subpart as "Form 679") or other form approved by CCC, or Lienholder's Subordination Agreement, Form CCC-864, if used in lieu of execution of Lienholder's Waiver on Form A in accordance with provisions of § 1427.13.

(f) *Powers of attorney.* A producer who desires to appoint an attorney-in-fact to act in the producer's place and stead in obtaining loans may use power of attorney, Form ASCS-211 (referred to in this subpart as "Form 211"), or a power of attorney on another form if it is determined by OGC to be legally sufficient. The original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy must be filed with the local county ASCS office or with a central County ASCS office when designated by CCC.

§ 1427.12 Warehouse receipt and insurance.

(a) *General.* Producers may obtain loans on cotton represented by warehouse receipts only if the warehouse receipts are negotiable machine card-type warehouse receipts, are issued by CCC approved warehouses, provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt, and otherwise are acceptable to CCC. The warehouse receipt must contain the tag number (warehouse receipt number), must show that the cotton is covered by fire insurance, and must be dated on or prior to the date the producer signs the note. If a bale is stored at the origin warehouse (the warehouse to which the bale was first delivered for storage after ginning), the warehouse receipt must contain the gin bale number. If a bale has been moved from the origin warehouse, the warehouse receipt shall, in lieu of the gin bale number, contain the tag number and identification of the origin warehouse. Open yard endorsement, if any, on the warehouse receipt must have been rescinded with the legend "open yard disclaimer deleted" with appropriate signature of the warehouseman or the authorized representative. Block warehouse receipts will be accepted when authorized by CCC under the following conditions:

(1) The owner of the warehouse issuing the block warehouse receipt shall also own the cotton represented by the block warehouse receipt, and

(2) The warehouse shall not be federally licensed.

(b) *Weight.* Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight, except that the warehouse receipt may show the net weight established at a gin (1) in case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and (2) if the showing of gin weights on the warehouse receipts is permitted by the licensing authority for the warehouse. The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (tare or net) weight ————
(Name of warehouse) ————
By ————
Date ————

Alterations in other inserted data on the receipt must be initaled by an authorized representative of the warehouse.

(c) *Storage and receiving charges.* If warehouse storage charges have been paid, the receipt must be stamped or otherwise noted to show that date through which the storage charges have been paid. For receipts showing accrued storage charges in excess of 60 days as of the date of tender to CCC, the loan amount will be reduced for each month of unpaid storage or fraction thereof in excess of 60 days by the monthly storage charge specified in the storage agreement between the warehouse and CCC. If warehouse receiving charges have been paid or waived, the receipt must be stamped or otherwise noted to show such fact. If the receipt does not show that receiving charges have been paid or waived, the loan amount will be reduced by the amount of the receiving charges specified in the storage agreement: *Provided, however,* That except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "receiving charges due include charge for new set of ties," or similar notation, and the loan amount will be reduced by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement). In any case where the loan amount is reduced by unpaid storage or receiving charges the charges will be paid to the warehouseman by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC or destroyed by fire while in loan status. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, or Virgina, if the bale is stored at a warehouse which does not have compress facilities or arrangements, and if the bale ties are not suitable for reuse when the bale is compressed, the warehouse receipt must show this fact, and the loan amount will be reduced by the charge which will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(d) *Rail shipments.* If the bale was received by rail, the receipt must be stamped or otherwise noted to show such fact.

(e) *Compression.* The warehouse receipt must show the compression status of the bale, i.e., flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. If the compression charge has been paid, or if the warehouse claims no lien for such compression, the receipt must be stamped or otherwise noted to show such fact.

§ 1427.13 Liens.

Except as otherwise provided in this section, cotton tendered for loan must be free and clear of all liens, except the warehouse lien (including a warehouse lien held by a cooperative warehouse for its producer-patrons) for those charges which are authorized in the storage agreement with CCC. The signatures of the holders of all such existing liens on cotton tendered as security for a loan, such as landlords, laborers, or mortgagees, must be obtained on the lienholder's waiver on each Form A, except that in lieu of signing the lienholder's waiver on each Form A, the lienholder may waive his/her lien on all cotton of that crop produced by a producer on a farm (or on all farms) or pledged on one Form A by use of Form 679 or by use of another form approved by CCC. In lieu of waiving a prior lien on cotton tendered as security for a loan, a lienholder may execute a Lienholder's Subordination Agreement (Form CCC-864) with CCC in which the lienholder subordinates the lienholder's security interests to the right of CCC in the cotton. If cotton is subject to warehouse lien for advances or charges not authorized in the storage agreement, the cotton will be acceptable hereunder if such liens are subordinated to the rights of CCC. A fraudulent representation as to prior liens or otherwise will render the producer personally liable and subject the producer, and any other person who causes the fraudulent representation to be made, to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act.

§ 1427.14 Service charges.

(a) Except for loans disbursed by an authorized LSA, a producer shall pay a non-refundable service charge to CCC for each loan disbursed at the rate of $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral. The service charge to be paid to CCC by the producer shall be in addition to any clerk fee paid to a loan clerk as authorized in § 1427.15.

(b) An authorized LSA may charge producers a service charge for each loan disbursed at a rate not to exceed $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral.

[Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.15 Clerk fees.

Loan clerks may collect fees from producers for preparing loan documents not to exceed the fees shown in the following schedule:

NUMBER OF BALES ON NOTE AND MAXIMUM FEE ALLOWED

1—25 cents.

2 to 6—25 cents plus 15 cents for each bale over 1.

7 and over—$1 plus 10 cents for each bale over 6.

§ 1427.16 Interest rate.

Loans shall bear interest at the rate announced in a separate notice published in the FEDERAL REGISTER.

§ 1427.17 Setoffs.

(a) If any installment(s) on any loan made available by CCC on farm-storage facilities or drying equipment is due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC as payee of such amount to the extent of such installment(s), but not to exceed that portion of the amount remaining after deduction of clerk fees, service charges, research and promotion fees, and amounts due prior lienholders.

(b) If the producer is indebted to CCC, or if the producer is indebted to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the program provided for in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in the Secretary's Setoffs and Withholding regulations, Part 13 of this title and any amendments thereto.

(c) Compliance with the provisions of this section shall not deprive the producer of any right the producer otherwise has to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1427.18 Special procedure where note amount advanced.

(a) *Purpose.* This special procedure is provided to assist persons or firms which in the course of their regular business of handling cotton for producers have made advances to eligible producers on eligible cotton to be placed under loan and desire to obtain credit at a financial institution for the amounts advanced. A financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) *Eligible documents.* This special procedure shall apply only to loan documents covering cotton on which a person or firm has advanced to the producers (including payments to prior lienholders and other creditors) the note amounts shown on the Form A, except for authorized loan clerk fees, the research and promotion fee collected for transmission to the Cotton Board, and CCC loan service charges, and shall apply only if such person or firm is entitled to reimbursement from the proceeds of the loans for the amounts advanced and has been authorized by the producer to deliver the loan documents to a county ASCS office for disbursement of the loans.

(c) *Delivery of notes to county offices.* Each Form A and related documents as required by § 1427.11 shall be mailed or delivered to a county ASCS office and shall show the entire proceeds of the loans, except for CCC loan service charges, for disbursement to (1) the financial institution which is to allow credit to the person or firm which made the loan advances or to such financial institution and such person or firm as joint payees, or (2) the financial institution which made the loan advances to the producers. When received in a county ASCS office (or postmarked, if mailed) warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.12. The documents shall be accompanied by Form CCC-825, transmittal schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the financial institution. The Form CCC-825 shall show the amounts invested by the financial institution in the loans, which shall be the amounts of the notes minus the amounts of CCC loan service charges shown on the notes. Upon receipt of the loan documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the financial institution.

(d) *Disbursement of loans.* County ASCS offices will review the loan documents prior to disbursement and will return to the financial institution any documents determined not to be acceptable because of errors or illegibility. County ASCS offices will disburse the loans for which loan documents are acceptable by issuance of one draft to the payee indicated on the Form A and will mail the draft to the address shown for such payee on the Form A with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by a county ASCS office and amount of interest earned by the financial institution.

(e) *Investment of funds by the financial institution.* The financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to a county ASCS office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county ASCS office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) *Basis of computing interest earned.* Interest will be computed on the total amount invested by the financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the financial institution to, but not including, the date of disbursement by a county ASCS office.

(g) *Interest rate.* Interest will be paid at the same rate(s) as that charged by CCC on commodity loans specified at part § 1427.16.

(h) *Payment of interest.* Interest earned by the financial institution in the investment in loans disbursed during a month will be paid by county ASCS offices after the end of the month.

§ 1427.19 Reconcentration of cotton.

(a) *As cotton enters loan.* Loans on cotton to be reconcentrated shall be available only on cotton received at CCC approved warehouses in areas where there is a shortage of storage space and the local warehouse certifies such fact to CCC. A producer who desires to obtain a loan on cotton to be reconcentrated under the provisions of this paragraph shall request such reconcentration and present the same documents as required for a regular loan. The Forms A-1 and warehouse receipts covering cotton to be reconcentrated must show the reconcentration order number furnished by the county office or authorized LSA under which the cotton will be shipped. The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office. Any fees, cost, or expenses incident to such actions shall be charges against the cotton. That office shall obtain new warehouse receipts, allocate to individual bales shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

(b) *Cotton under loan.* CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC. CCC may also move the cotton from one storage point to another with the written consent of the producer or borrower and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area: *Provided, however,* That if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained. Any fees, costs, or expenses incident to such actions shall be charges against the cotton. After the cotton is reconcentrated, the Kansas City Commodity Office shall allocate shipping and other charges incurred against the cotton and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loans.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.20 Custodial offices.

Forms A and A-1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county ASCS office, authorized LSA, central county ASCS office, or any financial institution (defined in §1427.2 and approved by CCC), whichever disbursed the loan evidenced by such documents.

[Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.21 Loss of or damage to pledged cotton.

In any case where loss of or damage to cotton occurs while such cotton is pledged to CCC, CCC shall have the right to determine and file claims against any liable parties for the resulting loss. Upon determination of the identity of the bales of loan cotton lost or damaged, CCC will give credit on the producer's note for the loan value (including interest and charges) of such cotton. If the proceeds of the claim exceed the loan value of such cotton, the excess proceeds shall be remitted to the producer or to the party repaying the loan if the loan has been repaid.

§ 1427.22 Repayment of loans.

(a)(1) In order to redeem one or more bales of cotton pledged to CCC as collateral for a loan, the producer must pay to the local county ASCS office or an authorized LSA, whichever disbursed the loan, or to the bank as provided in paragraph (a)(3) of this section, the loan principal, together with any interest and other charges which may be applicable to the bales of cotton being redeemed. An authorized agent which has an agreement with CCC and which is designated by producers to repay such loans on their behalf may repay such loans through a central county ASCS office designated by CCC.

(2) Upon payment of the amounts specified in paragraph (a)(1) of this section, the local county ASCS office or the authorized LSA (whichever disbursed the loan) shall transmit the warehouse receipts applicable to the cotton pledged as loan collateral which has been redeemed (and, if requested, the classification memoranda applicable to such cotton) to the producer or authorized agent.

(3) The producer may request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer who desires to appoint an attorney-in-fact to act for the producer for the purpose of: (i) Redeeming the producer's cotton which is pledged as collateral, (ii) selling the producer's equities in the cotton pledged as loan collateral, or (iii) executing Forms CCC-813, release of Warehouse Receipts (referred to in this subpart as "Form 813"), shall use Form 211, except that a power of attorney on another form will be accepted if it is determined by CCC to be sufficient.

(2) In order to redeem cotton or to execute Form 813, the attorney-in-fact must: (i) File with the local county ASCS office, authorized LSA, or central county ASCS office designated by CCC, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy; and (ii) execute and file with the local county ASCS office, authorized LSA or central county ASCS office designated by CCC, whichever disbursed the loan, an agreement of attorney-in-fact, Form CCC-815 (referred to in this subpart as "Form 815").

(3) The attorney-in-fact redeeming a producer's cotton under authority of a power of attorney or signing the Form 813 under authority of a power of attorney shall not: (i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or (ii) sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the equities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not: (i) Pool the producer's cotton or the proceeds therefrom or (ii) make settlement with such producers on a pool basis upon sale of the cotton or the equities therein. The attorney-in-fact will, however, make an accounting to each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact transfers, unless the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person(s) or transferee (hereinafter called the "buyer") on Form 813. If the buyer executes and files the Form 813 with the loan originating office the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan which is applicable to such cotton.

CCC will use its best efforts to make certain that the cotton is not redeemed by anyone other than the buyer and to provide for the delivery to the buyer of the warehouse receipts (and, if requested, the classification memoranda) covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges, to the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overage remaining from the proceeds received therefrom shall, after deducting from such proceeds the principal amount of the loan on such cotton, together with any applicable interest and other charges, be paid to the buyer or the buyer's personal representative without right of assignment to, or substitution of, any other person. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in paragraphs (a), (b), and (c) of this section.

[Amdt. 6, 50 FR 52216, Dec. 23, 1985]

§ 1427.23 Cotton cooperative marketing association loans.

A cotton cooperative marketing association which meets the eligibility requirements established by CCC as contained in the regulations in Part 1425 of this chapter and any amendment thereto may enter into a cotton cooperative loan agreement, Form CCC Cotton G, which provides for loans through the association to its producer-members. Copies of the form of agreement will be furnished to all associations which have been approved under such regulations. The loan rates under this agreement will be the same as for loans made to individual producers on Forms A and eligibility requirements for cotton and producers tendering cotton to the association and other loan provisions will be similar to those for Form A loans made to individual producers.

§ 1427.24 Death, incompetency, or disappearance.

In the case of death, incompetency, or disapperance of any producer who is entitled to the payment of any proceeds in settlement of a loan, payment shall, upon proper application to the county office which disbursed the loan, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, Part 707 of this title, and any amendment thereto.

§ 1427.25 Kansas City Commodity Office and Management Field Office.

(a) Kansas City Commodity Office, P.O. Box 8377, Shawnee, Mission, Kansas 66208, will serve all States.

(b) Accounting, recording, and reporting for all States will be handled through Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141.

[45 FR 44294, July 1, 1980, as amended by Amdt. 6, 50 FR 52217, Dec. 23, 1985]

Subpart—Seed Cotton Loan Program Regulations

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c).

SOURCE: 43 FR 19194, May 4, 1978, unless otherwise noted.

§ 1427.160 General statement.

The regulations in this subpart, including any amendments hereto, set forth the requirements with respect to recourse loans on eligible upland and extra long staple seed cotton of the 1978 and subsequent crops of cotton for which a seed cotton loan program is authorized. Recourse loans will be made available by CCC through county offices to eligible cotton producers and approved cotton cooperative marketing associations at approved locations.

§ 1427.161 Administration.

(a) *Responsibility.* The Price Support and Loan Division, Agricultural Stabilization and Conservation Service, will administer the provisions of this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, in accordance with program provisions and policy determined by the CCC Board of Directors and the President or Executive Vice President, CCC. In the field, the program in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees and the Management Field Office.

(b) *Limitation of authority.* County executive directors, State and county committees, the Management Field Office, and employees thereof do not have authority to waive or modify any of the provisions of the regulations in this subpart.

(c) *State committee.* The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also: (1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the applicable regulations in this subpart.

(d) *Executive Vice President, CCC.* No delegation herein to a State or county committee or the Management Field Office shall preclude the President or Executive Vice President, CCC, or the Executive Vice President's designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee or the Mangement Field Office.

§ 1427.162 Availability of loans.

(a) *Locations.* Loans on eligible seed cotton shall be available only at locations where conditions make it feasible, subject to the approval of the County committee of the county in which the gin is located. Approval of such locations will be based upon the climatic conditions of the area, the type storage suitable for the area, and other conditions that are determined necessary in order to protect the interest of CCC and producers. A ginner who desires approval and desires to participate in the program shall submit an application for a determination of eligibility. An application form, related questionnaire, and copy of these regulations may be obtained from the State or county office. Such applications should be filed as soon as possible, before the ginning season starts.

(b) *Period of availability.* Loans will be available from the beginning of harvest through March 31 following the calendar year in which such crop is grown.

§ 1427.163 Disbursement of loans.

(a) *Where to request loans.* A producer or the producer's agent shall request a loan at the local county office for the county where the cotton is stored, which will assist the producer in completing the loan documents, except that approved cooperatives and approved financially responsible commercial ginning companies designated by producers to obtain loans in their behalf may obtain loans through a central county office.

(b) *Disbursement of loans.* Disbursement of each loan will be made by the county office of the county in which the cotton is stored by means of drafts drawn on CCC by the county office, except that approved cooperatives or commercial ginning companies designated by producers to obtain loans in their behalf may obtain disbursement of loans at a central county office. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the draft issued in payment of the loan or, if the draft has been negotiated, shall promptly return the proceeds.

§ 1427.164 Eligible producer.

(a) *Producer.* An eligible producer is any individual, partnership, corporation, association, trust, estate, or other legal entity, a State or political subdivision thereof, or an agency of such State or political subdivision producing eligible upland or eligible extra long staple seed cotton in the capacity of landowner, landlord, tenant, or sharecropper. If eligible seed cotton is produced on a farm by a landlord and the share tenant or sharecropper, a loan may be obtained only as follows:

(1) If the seed cotton is divided among the producers entitled to share in such cotton, each landlord, tenant, or sharecropper may obtain a loan on their separate share.

(2) If the seed cotton is not divided, all producers having a share in the seed cotton may obtain a joint loan on such cotton.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of the estate of a ward or an incompetent person, and a trustee of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent person, and the beneficiaries of the trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person represented. Loan documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for a loan only if the minor meets one of the following requirements: (1) The right of majority has been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian; (3) any note signed by the minor is cosigned by a financially responsible person; or (4) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been a adult.

(d) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to Part 1425 of this chapter, to obtain loan(s) on a crop of cotton, may obtain loans on eligible production of such crop on behalf of its members provided the marketing agreement between the producer and the cooperative gives the cooperative such authority. The term "producer" as used in this subpart and on applicable forms shall refer both to an eligible producer as defined in paragraphs (a), (b), and (c) of this section and to an approved cooperative marketing association unless the content otherwise requires.

§ 1427.165 Eligible seed cotton.

Upland and extra long staple seed cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) Such cotton must be tendered for a loan within the availability period of § 1427.162.

(b) Upland cotton must have been produced on a farm by a producer who has complied with price support eligibility requirements, if any, specified in Parts 713, 718, 791, and 792 of this title and any amendment thereto. Extra long staple cotton must have been produced by a "cooperator" as defined in section 408(b) of the Agricultural Act of 1949, as amended, on a farm on which it has been determined there has been compliance with price support eligibility requirements, if any, specified in Part 722 of this title and any amendment thereto.

(c) Such cotton must be in existence and in good condition.

(d) The producer tendering the cotton for loan must have the legal right to pledge it as security for a loan.

(e) Such cotton must not have been produced on land owned by the Federal Government if such land is occupied without a lease, permit or other right of possession.

(f) The producer tendering such cotton must not have previously sold and repurchased such cotton or placed it under CCC loan and redeemed it.

(g) The beneficial interest in the cotton must be in the producer tendering the cotton for a loan and must have always been in the producer or in the producer and a former producer whom the producer succeeded before it was harvested. To meet the requirements of succession to a former producer, the right, responsibilities, and interest of the former producer with respect to the farming unit on which the cotton was produced shall have been substantially assumed by the person claiming succession. Mere purchase of the crop prior to harvest without acquisition of any additional interest in the farming unit shall not constitute succession. The county committee shall determine whether the requirements with respect to succession have been met. A producer shall not be considered to have divested himself of the beneficial interest in the cotton of the producer enters into a contract to sell, or gives an option to buy the cotton, if, under the contract or option, the producer retains control and risk of loss of and title to the cotton, and retains controls of its production. If a loan is made available through an approved cooperative marketing association, the beneficial interest in the cotton must always have been in the producer-members who delivered the cotton to the approved cooperative or its member cooperative or must always have been in them and former producers whom they succeeded before the cotton was harvested. Cotton so delivered to a cooperative marketing association shall not be eligible for a loan if the producer-members who delivered the cotton to the cooperative or its member cooperative do not retain the right to share in the proceeds from the cotton as provided in Part 1425 of this chapter.

(h) If the person tendering the cotton for a loan is a landowner, landlord, tenant, or sharecropper, the cotton must be the landowner, landlord, tenant, or sharecropper's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper, or have been received in payment of fixed or standing rent.

(i) The cotton must be stored in identity preserved lots in approved storage meeting requirements of § 1427.171.

[43 FR 19194, May 4, 1978, as amended at 46 FR 47060, Sept. 24, 1981]

§ 1427.166 Insurance.

The cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the cotton, waivers that will fully protect the interest of CCC must be obtained even though the liens or encumbrances are to be satisfied from the loan proceeds, except in the case of approved cooperatives who agree to hold CCC harmless from liability to prior lienholders. In lieu of waiving his prior lien on the cotton tendered as security for a loan, a lienholder may execute a Lienholder's Subordination agreement (form CCC-864) with CCC in which the lienholder subordinates the security interest to the rights of CCC in the cotton. A fraudulent representation as to prior liens or otherwise will render the producer liable under the civil frauds statutes and subject the producer and any other person who causes the fraudulent representation to be made to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act.

§ 1427.168 Forms, authorizations, and other documents.

The documents to be delivered by producers in connection with each loan shall be as follows: A note, chattel mortgage, and security agreement, and required lien waiver or subordination agreement, and such other documents as may be required by CCC.

§ 1427.169 Loan rate and quality.

(a) The loan rate applicable to each quality of seed cotton placed under loan shall be the loan rate as specified for the applicable crop for that quality of cotton in the county where stored which is published annually in a notice in the FEDERAL REGISTER.

(b) *Quality.* The quality to be used in determining the loan rate shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by a USDA Board of Cotton Examiners, the quality for the lot shall be the quality shown on the form 1 or form 3 classfication card issued for the control sample.

[43 FR 19194, May 4, 1978, as amended at 46 FR 47060, Sept. 24, 1981]

§ 1427.170 Quantity for loan.

(a) *Quantity.* The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b) of this section.

(b) *Lint turnout factor.* The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine picked cotton and 22 percent for machine stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) *Maximum quantity for loan.* Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors: (1) Condition or suitability of the storage site or structure, (2) condition of the cotton, (3) location of the storage site or structure, and (4) other factors peculiar to individual farms or producers which relate to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, of an approved gin. If the cotton is stored off the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton.

§ 1427.172 Loan service fee.

A producer shall pay a loan service fee of $10 per loan, plus $1 for each additional rick or other individual lot in storage over one, for each loan disbursed, except that in the case of loans to approved cooperatives or to producer through approved ginning companies acting in the producer's behalf, the fee shall be $7.25 per loan if the cooperative or approved ginning company prepares the loan documents. This fee is not refundable.

§ 1427.173 Interest rates.

Loans shall bear interest at the rate announced in a separate notice published in the FEDERAL REGISTER.

[43 FR 30038, July 13, 1978]

§ 1427.174 Restrictions in use of agents.

A producer who desires to appoint an attorney-in-fact to act in the producer's place and stead in obtaining and repaying loans may use Power of Attorney, Form ASCS 211 (referred to in this subpart as "Form 211"), except that a power of attorney on another form will be accepted if it is determined by CCC to be legally sufficient. The original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy must be filed with the county office. An attorney-in-fact shall not make any purchase of the seed cotton redeemed from a loan or the producers' equity in such cotton for the attorney-in-fact's account or as agent for others, or sell any such cotton or equities therein to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sales of the seed cotton, the equity therein, or the lint cotton produced therefrom. Any delegation of authority given in violation of this paragraph shall be without force and effect and shall not be recognized by CCC.

§ 1427.175 Setoffs.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due and payable to the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in the Secretary's "Setoff Regulations", Part 13 of this title, to such indebtedness.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right that would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1427.176 Loss or damage to the cotton.

The producer is responsible for any loss in quantity or quality of the cotton under loan.

§ 1427.177 Maturity.

Loans on seed cotton are due and payable on May 31 following the calendar year in which such crop is grown, or upon such earlier date as CCC may make written demand for payment in order to be in a position to conform to State or local quarantine regulations or for other reasons.

§ 1427.178 Settlement.

(a) *Release of chattel mortgage.* The chattel mortgage shall not be released until the loan has been satisfied in full. After satisfaction of a loan, the county executive director shall release the chattel mortgage.

(b) *Repayment of loan.* A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan cotton by paying the amount of the loan thereon, plus interest and charges to CCC.

(c) *Removal of loan cotton.* A producer or the producer's agent shall not remove from storage any cotton covered by a chattel mortgage until prior written approval has been received from the county committee for removal of such cotton. Any such approval shall be subject to the terms and conditions set out in the approval form. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan, interest, and charges thereon must be satisfied not later than (1) the date established by the county committee, (2) promptly after the producer received the class cards (and the warehouse receipts, if the cotton is delivered to a warehouse), representing such cotton, or (3) the loan maturity date, whichever is earliest. If the seed cotton or lint cotton is sold, the loan, interest, and charges must be satisfied immediately. A producer (except a cooperative) may obtain a warehouse storage loan on the lint cotton, but the loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse storage loan. An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse storage loan. If approved cooperatives and commercial ginning companies authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the cooperative or commercial ginning company notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard, furnished CCC an irrevocable letter of credit if requested, and repays the loan within the time specified by the county committee. Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the cotton or to release the producer or approved cooperative from liability for the loan, interest, and charges if full payment of such amount is not received by the county office.

(d) *Cotton going out of condition.* If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately so notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a warehouse storage loan on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(e) *Need for removal from storage.* If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the cotton shall be considered abandoned.

§ 1427.179 Fraud and unlawful disposition.

The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, or in connection with settlement, or the unlawful disposition of any portion of the cotton by the producer, shall render the producer and any other person who causes such fraudulent representation to be made subject to criminal prosecution or action under civil frauds statutes under Federal law.

§ 1427.180 Foreclosure.

Any seed cotton pledged to CCC as security for loan which is abandoned or which has not been removed from storage by loan maturity may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds are less than the amount due on the loan (including interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. Any overplus remaining from the proceeds received therefrom, after deduction from such proceeds the amount of the loan, interest, ginning charges and any other charges, shall be paid to the producer or the producer's personal representative without right of assignment to or substitution of any other person.

§ 1427.181 Definitions.

As used in the regulations in this subpart, and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires:

(a) *General.* The following words or phrases: "Person," "State committee," "State executive director," "county committee," "county executive director," and "farm," respectively, shall each have the same meaning as the definitions of such terms in the "Regulations Governing Reconstitution of Farm and Allotments," Part 719 of this title, and any amendments thereto.

(b) *CCC.* The term "CCC" shall mean Commodity Credit Corporation.

(c) *Management Field Office.* The term "Management Field Office," shall mean Management Field Office, P.O. Box 205, Kansas City, Mo. 64141.

(d) *County committee.* The term "county committee" shall mean only the county committee and not its representative.

(e) *County office.* The term "county office" shall mean the Agricultural Stabilization and Conservation county office.

(f) *Chattel mortgage.* The term "chattel mortgage" means any security instrument which secures a loan under this subpart.

(g) *Charges.* The term "charges" means all fees, cost, and expenses incident to insuring, carrying, handling, storing, ginning, conditioning and marketing the cotton and cottonseed and otherwise protecting the interest in the loan collateral of CCC or the producer.

(h) *Representative of the county committee and county committee representative.* The terms "representative of the county committee" and "county committee representative" means a member of the county committee, the county executive director, or a person designated by the county executive director to act in the county executive director's behalf.

(i) *Seed cotton.* The term "seed cotton" shall mean cotton which has not passed through the ginning process.

(j) *Lint cotton.* The term "lint cotton" shall mean cotton which as passed through the ginning process.

Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC-49, "Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,"

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the

warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

(c) The bond requirements, and, at the discretion of the KCCO, the financial, warehouse receipt, and bale tag requirements, of this subpart are not applicable to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is operated by the State of South Carolina Department of Agriculture.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at

any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

PART 1430—DAIRY PRODUCTS

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AUTHORITY: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446, 96 Stat. 763); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*), unless otherwise noted.

Subpart—Price Support Program

§ 1430.282 Price support program for milk.

(a)(1) The level of price support for milk and the prices Commodity Credit Corporation will pay for dairy products purchased under the Milk Price Support Program are revised at least once a year. Such revisions will appear as notices in the FEDERAL REGISTER.

(2) Price support for milk will be made available through purchases by Commodity Credit Corporation of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of purchase announcements issued by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(3) Commodity Credit Corporation may, by special announcement, offer to purchase other dairy products to support the price of milk.

(4) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Procurement and Sales Division, P.O. Box 2415, Washington, DC 20013, or the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Kansas City ASCS Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas 66208.

(b) (1) The block cheese shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter shall be U.S. Grade A or higher.

(c) The products shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by inspection certificates issued by the U.S. Department of Agriculture.

(Secs. 301, 401, Pub. L. 439, 81st Cong., 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421); Secs. 4 and 5, Pub. L. 806, 80th Cong., 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c))

[45 FR 73011, Nov. 4, 1980, as amended at 46 FR 50363, Oct. 13, 1981]

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers Prior to December 1, 1983

Source: 48 FR 34727, Aug. 1, 1983, unless otherwise noted.

§ 1430.291 General statement.

This subpart provides for the implementation of provisions of the dairy price support program as authorized by section 201 of the Agricultural Act of 1949, as amended (referred to hereafter as the "Act").

(a) Section 201(d)(2) of the Act provides that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50-cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. The Secretary's authority for requiring such deductions shall not apply for any fiscal year for which the Secretary estimates that the net price support purchases of milk or the products of milk will be less than 5 billion pounds milk equivalent. In addition, if at any time during a fiscal year the Secretary should estimate that such net price support purchases during the fiscal year will be less than 5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of the fiscal year.

(b) Section 201(d)(3) of the Act provides that during the period of April 1, 1983, through September 30, 1985, the Secretary may provide for an additional deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. Such deductions shall be implemented only if the Secretary establishes a program whereby the deductions are refunded to producers who reduce their commercial marketings from such marketings during a base period, and if the Secretary estimates that the net price support purchases of milk or the products of milk will be at least 7.5 billion pounds milk equivalent during the applicable fiscal year. If at any time during a fiscal year the Secretary should estimate that such net price support purchases during the fiscal year will be less than 7.5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of the fiscal year.

§ 1430.292 Definitions.

For purposes of this subpart:

(a) *"ASCS"* means the Department's Agricultural Stabilization and Conservation Service.

(b) *"Base period"* means the 24-month period beginning October 1, 1980, and ending September 30, 1982.

(c) *"CCC"* means the Commodity Credit Corporation.

(d) *"County committee"* means an Agricultural Stabilization and Conservation county committee established under 16 U.S.C. 590h.

(e) *"Diary Division"* means the Dairy Division of the Department's Agricultural Marketing Service.

(f) *"DASCO"* means Deputy Administrator, State and County Operations, ASCS.

(g) *"Deduction"* means that amount which is deducted in accordance with § 1430.291 from the proceeds of sale of all milk marketed commercially by producers.

(h) *"Department"* means the United States Department of Agriculture.

(i) *"Marketing year"* means the 12-month period beginning October 1 and ending September 30.

(j) *"Participating producer"* means a producer who reduces his milk marketings and claims a refund.

(k) *"Person"* means any individual, partnership, corporation, association, or other business or government unit.

(l) *"Producer"* means any person within the United States who produces milk from cows.

(m) *"Producer base"* means the 2-year average of the amount of milk marketed during the months, or portion thereof, of the base period which are comparable to the months for which a producer is requesting a refund.

(n) *"Refund"* means the money that is returned to a producer who reduces his marketings by the required reduction announced by the Secretary.

(o) *"Required reduction"* means the amount of reduction in the milk marketed commercially by a producer in order for the producer to be eligible to receive a refund of the deduction described in § 1430.291(b).

(p) *"Responsible person"* means:

(1) Any person who pays a producer for milk marketed commercially by the producer, except in a transaction covered by paragraph (p)(2) of this section. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers.

(2) Any producer with respect to milk of his own production that he markets commercially in the form of milk or milk products to consumers, either directly or through retail or wholesale outlets.

(q) *"Secretary"* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated or to whom authority may hereafter be delegated to act in his stead.

(r) *"State Committee"* means an Agricultural Stabilization and Conservation State committee established under 16 U.S.C. 590h.

(s) *"Surplus"* means the milk equivalent of the dairy products which the Secretary estimates will be purchased by the CCC during the applicable marketing year.

(t) *"United States"* means the 50 states of the United States of America, the District of Columbia, Puerto Rico, and the territories of the United States of America.

§ 1430.293 Period of applicability.

The provisions of this subpart shall apply only to the milk that is marketed commercially by producers in the United States during those months, or portions thereof, for which the Secretary has announced that the deductions are required.

§ 1430.294 Responsibility for administration of regulations.

(a) The Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of the deductions.

(b) DASCO, through the State and county committees, shall have the responsibility for administering the provisions of this subpart which relate to the establishment of bases and refund of the deductions.

§ 1430.295 Remittance of producer deductions to CCC.

Deductions will be remitted to the CCC in accordance with the following procedures:

(a) Each responsible person who pays a producer for milk marketed commercially during the month, or portion thereof, shall remit to the CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to the number of hundredweight of milk for which payment to the producer is being made multiplied by:

(1) 50 cents, if only the deductions described in § 1430.291(a) are applicable; or

(2) $1.00, if the deductions described in both paragraphs (a) and (b) of § 1430.291 are applicable.

(b) Each responsible person who markets milk of his own production to consumers (either directly or through retail or wholesale outlets) in the form of milk or milk products during the month shall remit to the CCC by the last day of the following month an amount equal to the number of hundredweight of such person's own production used in such marketings multipled by:

(1) 50 cents, if only the deductions described in § 1430.291(a) are applicable; or

(2) $1.00, if the deductions described in both paragraphs (a) and (b) of § 1430.291 are applicable.

(c) When remitting money to the CCC in accordance with paragraphs (a) and (b) of this section, each responsible person shall file a report prescribed by the Dairy Division showing:

(1) The identity of the responsible person, including such person's business address;

(2) The month, or portion thereof, in which the applicable producer marketings occurred; and

(3) The total pounds of milk to which the remittance applies.

(d) Money remitted to the CCC shall be in the form of a negotiable instrument made payable to "Commodity Credit Corporation."

(e) Remittances and reports required under this section shall be mailed to the location designated by the Dairy Division.

§ 1430.296 Procedures for establishing producer bases.

(a) Each producer who desires a refund shall be responsible for establishing his monthly marketings of milk during the base period with the county committee for the county where the producer's dairy farm is headquartered. From the producer's marketing records, the county committee shall determine 2-year monthly averages and a 2-year 12-month average of the producer's marketings during the base period.

(b) In any marketing year in which the deductions described in § 1430.291(b) are in effect for a period of less than 12 months, only the comparable months, or portion thereof, of the base period shall be used to determine the producer's base.

(c) If a producer has acquired a complete dairy operation (i.e., land, equipment, and dairy cattle) from another producer, the producer base of the acquiring producer may be increased by the producer base of the former owner. Such a transfer of producer base will be reviewed by the county committee in the county where the acquiring producer's dairy farm is located and will be approved by the committee only if there are adequate records to establish the base of the former owner.

(d) In the event that a partnership, or any other arrangement whereby one or more parties possessing interests in the cow herd or the cow herd and other dairy production facilities is dissolved, the producer base shall be divided among the parties in the same proportion as they apportion the cow herd.

§ 1430.297 Determination of required reduction.

The required reduction for any marketing year or portion thereof shall be announced by the Secretary in a notice published in the FEDERAL REGISTER prior to the beginning of the period of time during which the deductions described in § 1430.291(b) are in effect. The required reduction shall not be larger than the ratio that the estimated surplus milk production bears to the estimated milk production for the applicable marketing year.

§ 1430.298 Refund procedure.

(a) A refund of the amount deducted from a producer's proceeds in accordance with § 1430.291(b) shall be made only if the producer has reduced his milk marketings relative to his producer base by the required reduction which is determined and announced in accordance with § 1430.297.

(b) A refund may be requested only after the end of the applicable marketing year, or portion thereof, in which the deductions described in § 1430.291(b) are in effect. However, if requested an advance payment of refund shall be made to eligible producers semi-annually during the marketing year when the second 50-cent deduction is in effect on October 1 of the marketing year and continues for over 7 months. The advance payment will be limited to 60 percent of the estimated refund computed on the basis of marketings during the first half of the marketing year and will be made only upon receipt of assurance from the producer that he intends to reduce his marketings by not less than the required amount for the full year. Requests for an advance payment must be submitted to the county committee no later than June 30 of the marketing year. Requests for refunds must be submitted to the county committee by December 31 following the end of the marketing year. All amounts, refunded which are determined by CCC to have not been earned shall be repaid to CCC with interest from the date of payment of the refund to the producer, computed in accordance with 7 CFR Part 1403.

(c) A refund or advance payment of refund shall be made only if a producer provides the county committee with records that adequately show (1) the producer's milk marketings during the applicable marketing year, or portion thereof, in which the deductions described in § 1430.291(b) are in effect and (2) the amount of the deduction actually withheld during the period for which he is applying for a refund or advance payment of refund.

§ 1430.299 Responsibility for records and facilities.

(a) *Records to be maintained.* Each responsible person, as well as each producer who is granted an advance payment of refund or a refund, shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities.* Each responsible person, as well as each producer who is granted an advance payment of refund or a refund, shall make available all records and facilities pertaining to such person's or producer's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by each responsible person, as well as each producer who was granted an advance payment of refund or a refund, for a period of three years beginning at the end of the month to which such records pertain, or for such longer period as the Department may specifically notify a responsible person or producer.

§ 1430.300 Scheme or device.

All or any part of the refunds due a producer under this part may be withheld or required to be refunded to CCC with interest computed in accordance with 7 CFR Part 1403 from the date of payment to the producer if the producer adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part, submitting false information to the county committee, creating fictitious entities, or engaging in transfers of producer bases which do not reflect substantive changes in farming operations for the purpose of becoming eligible for a refund or increasing the size of such refund. This liability shall be in addition to any other liability imposed in accordance with this subpart or any other provision of law.

§ 1430.301 Adjustment of accounts for responsible persons.

Whenever the Department determines through an audit of a responsible person's reports, records, books or accounts or through some other means that additional money is due the CCC or that money is due such person from the CCC, the responsible person shall be notified of the amount due. The responsible person shall then remit any amount due the CCC by the next date for remitting deductions as provided in § 1430.295. Overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if this subpart is not applicable in succeeding months.

§ 1430.302 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each responsible person who issues a negotiable instrument to the CCC that is not honored because of insufficient funds or any other reason shall be assessed a charge of $25.00. This charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-payment charge.* Any unpaid obligation of a responsible person that is due the CCC in accordance with § 1430.295 shall be increased by a late-payment charge which shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The total obligation due from such person shall include any unpaid charges computed previously under this part. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundredth of one percent) of the annual rate of interest announced by the CCC under 7 CFR 1403.5. The timeliness of a payment to the CCC shall be based on the applicable postmark date or the date actually received by CCC, whichever is earlier.

(c) *Penalties.* Any responsible person who willfully violates any provision of this subpart, including the willful failure or refusal to remit any amounts due the CCC, shall be liable, in addition to payment of the full amount due plus the applicable late-payment charge, for a penalty to be assessed by the Secretary of not more than $1,000 for each such violation and other remedies otherwise provided by law or in equity.

§ 1430.303 Continuing obligations.

Obligations of any responsible person, as well as any producer who was granted a refund, that arise under this subpart shall continue in effect until the final payment or other disposition agreed to by CCC even though the deductions described in § 1430.291 may no longer be required.

§ 1430.304 Limitation of authority.

(a) State and county committees or their designees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) A State committee may take any action authorized or required by the regulations in this subpart to be taken by a county committee when such action has not been taken by the county committee. A State committee may also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 1430.305 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent producer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be production of the producer such receiver or trustee represents. Program documents executed by the receiver or trustee will be accepted only if they are legally valid and such person has the authority to execute the applicable documents.

(b) A participating producer who is a minor shall be eligible for a refund pursuant to the regulations in this subpart only if (1) the right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 1430.306 Appeals.

The appeal regulations found at 7 CFR Part 780 shall be applicable to appeals by participating producers from determinations made pursuant to the regulations in this subpart.

§ 1430.307 Setoffs.

If a participating producer is indebted to any agency of the United States, any refund which is due such producer under the regulations in this subpart shall be applied to such indebtedness in accordance with the provisions of 7 CFR Part 13, Setoff and Withholdings. The CCC may also setoff any amounts due CCC under this subpart in accordance with the provision of 7 CFR Part 13.

§ 1430.308 Overdisbursement.

If a refund is disbursed to a participating producer which exceeds the amount which is authorized to be disbursed to the participating producer under this subpart, the participating producer shall be personally liable for repayment of the amount of such excess plus interest.

§ 1430.309 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any participating producer who is entitled to a refund, such refund may be made to the person or persons who are specified in 7 CFR Part 707. The person requesting such refund shall file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 1430.310 Assignment.

Any producer who may be entitled to a refund may assign his rights to such refund in accordance with 7 CFR Part 709.

§ 1430.311 Instructions and forms.

Such forms and instructions as are necessary for establishing bases and obtaining refunds pursuant to the provisions in this subpart may be obtained from the county ASCS office.

§ 1430.312 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB numbers 0560-0114 and 0581-0132 have been assigned.

Subpart—Regulations Governing Reduction in Price of Milk Marketed by Producers, December 1, 1983 to March 31, 1985

SOURCE: 49 FR 3, Jan. 4, 1984, unless otherwise noted.

§ 1430.320 General.

(a) *Purpose*—This subpart implements the provisions of section 201(d) of the Agricultural Act of 1949, as amended by the Dairy and Tobacco Adjustment Act of 1983, under which the Secretary of Agriculture is required to provide for a reduction of 50 cents per hundredweight in the price received on all milk produced in the United States and marketed by producers for commercial use. The purpose of the reduction is to encourage the adjustment of milk production to levels consistent with national demand for milk and the products of milk. Funds represented by the reduction are to be remitted to the Commodity Credit Corporation (CCC) to offset a portion of the cost of the milk diversion program which is required to be established in accordance with section 201(d) of the 1949 Act.

(b) *Applicability.* The provisions of this subpart shall apply to all milk that is marketed for commercial use by producers during the period beginning December 1, 1983 and ending March 31, 1985, in the forty-eight contiguous States in the continental United States and the District of Columbia, unless it is established, by meeting such requirements as may be specified by CCC, that the milk was not produced in the forty-eight contiguous States.

§ 1430.321 Definitions.

For purpose of this subpart:

(a) "ASCS" means the Department's Agricultural Stabilization and Conservation Service.

(b) "CCC" means the Commodity Credit Corporation.

(c) "Dairy Division" means the Dairy Division of the Department's Agricultural Marketing Service.

(d) "Department" means the United States Department of Agriculture.

(e) "Person" means any individual, partnership, corporation, association or other business or government unit.

(f) "Producer" means any person who produces milk through the milking of cows.

(g) "Reduction" means that amount by which the price received for milk marketed for commercial use by producers is reduced in accordance with the provisions of this subpart.

(h) "Responsible person" means:

(1) Any person who pays a producer for milk marketed by a producer for commercial use, except as otherwise prescribed in paragraph (h)(2) of this section. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers; and

(2) Any producer with respect to milk of his own production that he markets for commercial use in the form of milk or milk products to consumers either directly or through retail or wholesale outlets.

(i) "United States" means the forty-eight contiguous States in the continental United States (i.e., all fifty States of the United States, excluding Hawaii and Alaska).

(j) "United States bank" means a bank organized under the laws of the United States, a State of the United States or the District of Columbia.

§ 1430.322 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of funds represented by the reductions. Administrative subpoenas as may be determined to be necessary for the administration of this subpart may be issued by the Vice-President, CCC, who is the administrator, Agricultural Marketing Service, or his designee.

[49 FR 3, Jan. 3, 1984, as amended at 49 FR 26203, June 27, 1984]

§ 1430.323 Required reductions and remittances.

(a) *Reductions.* A reduction of 50 cents per hundredweight shall be made in the price received on all milk marketed by producers for commercial use.

(b) *Remittances by responsible persons paying for milk.* Each responsible person who pays a producer for milk marketed for commercial use during any month, or portion thereof, shall remit to CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to the number of hundredweight of milk for which payment to the producer is being made multiplied by 50 cents.

(c) *Remittances by other responsible persons.* Each responsible person who markets milk of his own production for commercial use to consumers (either directly or through wholesale or retail outlets) in the form of milk or milk products during any month shall remit to CCC by the last day of the following month an amount equal to the number of hundredweight of such person's own production used in such marketings multiplied by 50 cents.

(d) *Remittance report.* When remitting funds to CCC in accordance with paragraphs (b) and (c) of this section, each responsible person shall file a report prescribed by the Dairy Division which shall include:

(1) The identity of the responsible person, including such person's business address;

(2) The month, or portion thereof, in which the applicable producer marketings occurred;

(3) The total pounds of milk to which the remittance applies; and

(4) Any additional information required by the Dairy Division.

(e) *Remittance of funds.* Remittances to CCC shall be made by negotiable instruments payable in United States currency, drawn on a United States bank and made payable to "Commodity Credit Corporation." Remittances and reports required under this subpart shall be mailed to the location designated by the Dairy Division.

§ 1430.324 Availability of records and facilities.

(a) *Records to be maintained.* Each responsible person shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities.* Each responsible person shall make available to authorized representatives of CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by each responsible person for a period of three years beginning at the end of the month to which such records pertain, or for such longer period as the Dairy Division or CCC may require by notice to the responsible person.

§ 1430.325 Adjustment of accounts of responsible persons.

Whenever the Department determines through an audit of a responsible person's reports, records, books or accounts or through any other means that any funds are due CCC, such person shall be notified of the amount due. The responsible person shall then remit any amount due CCC by the next date for remitting reductions as provided in § 1430.323. Overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if this subpart is not applicable to milk marketed in succeeding months.

§ 1430.326 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each responsible person who issues a negotiable instrument to CCC that is not honored because of insufficient funds or any other reason shall be assessed a charge of $ 25. This charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late payment charge.* Any unpaid obligation due CCC under this subpart shall be increased by a late payment charge. Such charge shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundreth of one percent) of: (1) the annual rate of interest published as a notice in the FEDERAL REGISTER by CCC in accordance with the provisions of 7 CFR Part 1403 or (2) such other annual rate of interest made generally applicable to CCC obligations in substitution for the publication of a rate of interest in accordance with 7 CFR Part 1403. The timeliness of payment to CCC shall be determined based upon the applicable postmark date. Notwithstanding any other provision of this section, the late payment charge shall not apply to any interest previously accrued on the obligation. The late payment charge shall otherwise apply to all amounts which may become due under this subpart.

(c) *Penalties.* (1) Any person as to whom there has been a failure to make a reduction in the price of milk received by such person as required in this subpart or who fails to remit to CCC the funds required to be collected and remitted by this subpart shall be liable, in addition to any other amount due, for a marketing penalty at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies. The Vice-President, CCC, who is the Administrator, Agricultural Marketing Service, or his designee, may reduce any such penalty in such amount as is determined equitable in any case in which it is determined that the failure was unintentional or without knowledge on the part of the person concerned.

(2) In addition to the marketing penalty prescribed in paragraph (c)(1), any person who knowingly violates any of the provisions of this subpart shall be liable for a civil penalty of not more than $ 1,000 for each violation.

(3) The Vice-President, CCC, who is the Administrator, Agricultural Marketing Service, or his designee shall notify any person against whom a penalty is proposed to be assessed under this section of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

[49 FR 3, Jan. 3, 1984, as amended at 49 FR 26203, June 27, 1984]

§ 1430.327 Scheme or device.

Any person who is determined to have knowingly adopted any scheme or device which tends to defeat the implementation of the provisions of this subpart or made any fraudulent representation or misrepresented any fact affecting a determination under this subpart shall be considered to have knowingly violated the provisions of this subpart.

§ 1430.328 Continuing obligations.

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by CCC even though the reductions provided for in this subpart may no longer be required for current marketings of milk.

§ 1430.329 Administrative review.

Except with respect to the assessment of penalties under § 1430.326(c), any person who is dissatisfied with any determination of an amount determined to be owing under this subpart may obtain reconsideration of such determination by filing a request for reconsideration with the Director of the Dairy Division who shall be a CCC Claims Official for such purposes, within 15 days of the date on which a written demand for payment is made. If the person is dissatisfied with the determination of the Director of the Dairy Division upon reconsideration, the person may obtain a review of such determination and an informal hearing by filing an appeal with the Vice-President, CCC, who is the Administrator, Agricultural Marketing Service. Such appeals must be filed within 15 days of the date of the redetermination. Such appeals to the Vice-President, CCC, who is the Administrator, Agricultural Marketing Service will be conducted in the same manner as administrative appeals which are conducted under 7 CFR Part 780. The decision on such appeal shall constitute the final agency action in the matter.

[49 FR 3, Jan. 3, 1984, as amended at 49 FR 26203, June 27, 1984]

§ 1430.330 Setoffs.

CCC may set off any amounts due CCC under this subpart in accordance with the provisions of 7 CFR Part 1408, Setoff, Withholding, and Stop Payment Policies of CCC, or any provisions issued in lieu of such provisions.

§ 1430.331 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB number 0581-0132 has been assigned.

Subpart—Milk Diversion Program

AUTHORITY: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d); sec. 102(b) of the Dairy and Tobacco Adjustment Act of 1983; Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

SOURCE: 49 FR 363, Jan. 4, 1984, unless otherwise noted.

§ 1430.400 General statement.

This subpart implements the Milk Diversion Program authorized by Section 201(d)(3) of the Agricultural Act of 1949, as amended by the Dairy and Tobacco Adjustment Act of 1983. Producers of milk in the forty-eight continental States of the United States may enter into contracts with the Commodity Credit Corporation under which such producers agree, on a unit basis, to reduce their marketings of milk for commercial use during the period January 1, 1984, through March 31, 1985, from the marketings of milk attributable to the unit during an historical base period. Contracts will be made on a unit basis. The reduction, which is subject to certain adjustment and tolerances, shall be an amount specified by the producer but shall not be less than 5 percent nor more than 30 percent of the milk base established for the producer's unit in accordance with this subpart. The Commodity Credit Corporation will make a milk diversion payment at a rate of $10 per hundredweight to producers who reduce the quantity of milk marketed for commercial use by the required amounts and who also comply with all other terms and conditions of the program. This subpart sets forth eligibility requirements, conditions for payment, penalties for program violations, and other program requirements and provisions.

§ 1430.401 Administration.

(a) The program will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and shall be carried out in the field by Agricultural Stabilization and Conservation State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1430.402 Definitions.

In determining the meanings of the provisions of this subpart, unless the context indicates otherwise, words imparting the singular include and apply to several personsl or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing reconstitution of farms, Part 719 of this chapter.

(a) *"Actively engaged in the production of milk"* means the producing and marketing of milk for commerical use.

(b) *"ASCS"* means the Department's Agricultural Stabilization and Conservation Service.

(c) *"Base period"* means calendar year 1982 or calendar years 1981 and 1982, whichever the producer has elected for the purpose of establishing a milk base.

(d) "*CCC*" means the Commodity Credit Corporation.

(e) "*Contract*" means Form CCC-150 when executive by CCC and the producer.

(f) "*Contract percentage*" means the percentage by which the producer agrees to reduce the marketings of milk for commerical use from the milk base established for the producer's unit.

(g) "*Contract period*" means the period from January 1, 1984, through March 31, 1985.

(h) "*Contract reduction*" means the quantity by which the milk marketings for commercial use from the unit during the contract period must be reduced from the milk base amount as determined under § 1430.407 of this subpart.

(i) "*County ASCS Office*" means the office of the county committee in the headquarters county.

(j) "*County Committee*" means an Agricultural Stabilization and Conservation County Committee as established in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h).

(k) "*Dairy cow*" includes heifers born before April 1, 1983.

(l) "*Department*" means the United States Department of Agriculture.

(m) "*Headquarters county*" means the county a producer elects to be the location of the county ASCS office through which all business related to the producer's participation in the Milk Diversion Program for the unit shall be conducted provided that the unit or a portion of the unit is located in such county.

(n) "*Marketed for commercial use*" means the disposition of milk in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(o) "*Marketed milk*" means all milk produced in the United States and marketed for commercial use.

(p) "*Milk*" means milk of dairy cows.

(q) "*Milk base*" means a base established in pounds of milk for a unit as determined in accordance with § 1430.407 of this subpart.

(r) "*Milk production facility*" means all buildings and related equipment used for the production or handling of milk.

(s) "*Person*" means an individual, partnership, association, corporation, trust, estate, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(t) "*Producer*" means any person who is involved in, contributes to, or has any interest in any unit which is used for the production of milk and who shares in the risk and proceeds of the production of milk.

(u) "*Quarter*" means any of the following five three-month periods: January 1 to March 31, 1984; April 1 to June 30, 1984; July 1 to September 30, 1984; October 1 to December 31, 1984; and January 1 to March 31, 1985.

(v) "*Quarterly milk base*" means any of the five quarterly bases determined in accordance with § 1430.407 of this subpart.

(w) "*Unit*" means the dairy cows, milk production facilities, and land used to produce milk which are identified on the form used to establish a milk base for the unit and approved by the county committee.

(x) "*United States*" means the forty-eight contiguous States in the continental United States.

§ 1430.403 Nature of the contract; period of applicability; sign-up; producer eligibility.

(a) *Nature of the contract.* CCC will enter into milk diversion contracts on a unit basis with producers who produce milk in the United States and market such milk for commercial use and who agree to reduce their marketings of milk for commercial use during the period beginning January 1, 1984, through March 31, 1985, by an amount equal to a percentage specified by the producer of the milk base determined under this subpart. The specified percentage reduction shall not be less than 5 percent nor greater than 30 percent of the milk base established for the producer's unit. The unit shall be identified by the producer at the time the producer requests the establishment of a milk base. A producer with an interest in more than one unit may execute a contract to participate in the program for each such unit. All persons who have an interest in the unit must execute the contract. All such persons shall be jointly and severally liable on such unit for a failure to comply with the terms and conditions of the contract and this subpart. The milk base for the unit will be determined using five quarterly milk bases. These bases will be determined in the manner specified in this subpart based upon either the quantity of milk marketed for commercial use from the unit during calendar year 1982 or, at the producer's election, the average of such marketings during calendar years 1981 and 1982. Producers who make the required contract reduction and who otherwise comply with the terms and conditions of the contract and this subpart are eligible to receive a milk diversion payments from CCC in accordance with the provisions of this subpart. Producers who fail to make the required contract reduction or who otherwise fail to comply with the terms and conditions of the contract shall be ineligible for any milk diversion payments and shall be liable for substantial penalties.

(b) *Sign-up.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office not later than January 31, 1984.

(c) *Producer eligibility.* In order to be eligible to enter into a contract with CCC, a producer must:

(1) Be a producer of milk in the United States;

(2) Be actively engaged in the production of milk as of November 29, 1983;

(3) Have submitted a milk reduction plan to the county ASCS office in the headquarters county in accordance with the provisions of § 1430.404 of this subpart;

(4) Have established a milk base in accordance with § 1430.405 of this subpart; and

(5) Not have sold, leased or otherwise transferred either directly or indirectly, after November 8, 1983 and through the date an offer to enter into the milk diversion contract is submitted, dairy cows which would or could have been used for the production of milk during the contract period unless:

(i) The transfer is a sale, lease, or other transfer of dairy cows to another producer who executes a milk diversion contract with CCC;

(ii) The transfer is a sale of dairy cows for slaughter and the cattle are, in fact, slaughtered;

(iii) The cows are sold and delivered for export: *Provided,* that the producer is divested of all interest in such cows and the cows do not re-enter the United States; or

(iv) Such sale, lease, or transfer occurs before January 1, 1984, and the Administrator, ASCS, or his designee has determined that such sale, lease, or transfer does not defeat the goals of the Milk Diversion Program provided for in this subpart.

(d) If a unit includes dairy cows which were leased from another person as of November 8, 1983, the provisions of subsection (c) shall apply to such dairy cows and the word "transfer" shall include the return of such cows to the lessor.

(e) A producer may be considered to have been actively engaged in the production of milk as of November 29, 1983, if it is determined by the county committee that the producer was prevented from carrying out normal operations for the production of milk on that date due to conditions beyond the producer's control.

§ 1430.404 Milk reduction plan.

(a) Before executing a contract with CCC, the producer shall provide a milk reduction plan to the county ASCS office. The plan shall:

(1) Describe the manner in which the producer intends to achieve the reduction in milk marketings required under the contract;

(2) Include an estimate of the amount of such reduction which the producer intends to achieve through increased slaughter of dairy cows including the approximate number of dairy cows that will be sold for slaughter during each month of the contract; and,

(3) Contain such additional information as the county committee or CCC may require.

(b) The producer shall submit a revised plan if requested by the county committee and shall file all other reports relating to the disposition of cows which CCC may require in the contract or which may otherwise be required by this subpart.

§ 1430.405 Establishment of milk base.

(a) In order to establish the milk base for a unit, the county committee shall determine the quantity of marketings of milk for commercial use which can be claimed for the unit by the producer on the unit for the base period.

(b) A producer may claim those marketings of milk for commercial use which are attributable to the unit during the base period and for which the producer shared in the risk of production by supplying either the dairy cows from which the milk was produced and/or the production facility used to produce such milk: *Provided, however,* a producer may only claim such marketings to the extent to which the producer was entitled to an individual share in the proceeds of such marketings. In addition, a producer may claim those marketings of milk for commercial use which are attributable to the unit and claimable by the producer as a result of the transfer of marketing history in accordance with § 1430.406.

(c) The milk base for a unit shall be established based upon evidence submitted to the county committee by the producer which, in addition to such other evidence as the county committee or CCC may require, indicates the quantity of milk marketed for commercial use from the unit during the base period and any marketing history which has been transferred to the producer in accordance with § 1430.406. All producers on the unit shall be responsible for the accuracy of all information submitted to establish the milk base for the unit.

(d) A milk base may be adjusted if it is determined that such an adjustment is necessary to correct for abnormally low production in the base period as the result of a natural disaster or other condition beyond the control of the producer.

§ 1430.406 Transfer of marketing history.

Marketing history may be transferred by a producer to another person only if the producer's entire interest in the milk production facility and the producer's entire interest in the entire dairy herd has been transferred directly to the person claiming such history and such transfer of interest was made as a result of:

(a) The death of the producer;

(b) A gift from the producer; or

(c) A transfer to a member or members of the family of the producer. The term "member of the family of the producer" as used in this section shall mean: (1) An ancestor of the producer; (2) the spouse of the producer; (3) a lineal descendant of the producer, or the producer's spouse, or a parent of the producer; or (4) the spouse of any such lineal descendant.

§ 1430.407 Milk base amount.

(a) *Milk base.* The milk base for the unit shall be the sum of the five quarterly bases for the unit as determined in accordance with paragraph (b) of this section.

(b) *Quarterly base.* Five quarterly milk bases (expressed in pounds) shall be determined for each unit to correspond to the five quarters of the contract period.

(1) *Base period of 1982.* If the producer elects a 1982 base period, the first four quarterly bases of the contract period shall be the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 during each corresponding quarter for calendar year 1982. The first quarter base shall also be the fifth quarter base.

(2) *Base period of 1981 and 1982.* If the producer elects to use 1981 and 1982 marketing history as the base for the unit, the first four quarterly bases for the contract period shall be the average of the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 for each corresponding quarter of calendar year 1981 and the quantity of milk marketed for commercial use (as adjusted, if applicable) determined in accordance with § 1430.405 for each corresponding

quarter of calendar year 1982. The first quarter base shall also be the fifth quarter base.

§ 1430.408 Contract reduction.

(a) The producer shall specify in the contract a percentage, which shall not be less than 5 percent nor more than 30 percent, by which the producer agrees to reduce the quantity of milk marketed for commercial use in the contract period from the milk base established for the unit. The contract reduction (expressed in pounds) shall be the milk base established for the unit multiplied by the percentage specified in the contract. A producer shall be eligible for payment under the contract only if the reduction in the quantity of milk marketed for commercial use from the unit during the contract period equals or exceeds greater of: (1) The contract reduction less an amount equal to 3 percent of the milk base, and (2) 5 percent of the milk base.

(b) If the contract reduction is adjusted by CCC, a producer shall be considered to be eligible for payments if the producer has complied with the terms and conditions of the contract and the reduction in the quantity of milk marketed for commercial use equals or exceeds the greater of: (1) The adjusted contract reduction less an amount equal to 3 percent of the milk base, and (2) 5 percent of the milk base.

§ 1430.409 Contract compliance.

(a) In order to be eligible for diversion payments, the producer must be an eligible producer and must comply with all of the terms and conditions of the contract and this subpart. The contract between the producer and CCC shall provide that:

(1) The producer shall reduce the quantity of milk marketed for commercial use during the contract period by the quantity agreed upon between the producer and CCC (as adjusted, if applicable);

(2) The producer shall not have transferred, at any time after the date on which the offer to enter into the contract was submitted by the producer, any dairy cows that would or could have been used by the producer for the production of milk if the producer had not executed and complied with the contract, except to the extent that such transfer is permitted by § 1430.410 of this subpart.

(3) Any production capacity of a milk production facility that becomes available for use because a producer reduces milk production in order to comply with the terms and conditions of the contract shall not be used by the producer, or made available by the producer for use by any other person, for the production of milk; and

(4) The producer shall refund to CCC any payments received under the contact, together with interest, if the producer fails to comply with the terms and conditions of the contract and this subpart.

§ 1430.410 Restrictions on transfers of dairy cows.

(a) After the date on which the offer to enter into the contract was submitted by the producer, a producer shall not sell, lease, or otherwise transfer, either directly or indirectly, dairy cows which would or could have been used by the producer for the production of milk if the producer had not executed a contract unless:

(1) The producer sells the dairy cows for slaughter and such cows are, in fact, slaughtered;

(2) The transfer is a sale, lease, or other transfer of diary cows to another producer who has executed a milk diversion contract with CCC;

(3) The dairy cows are sold and delivered for export: *Provided,* that the producer is divested of all interest in such cows and the cows do not reenter the United States.

(b) The transfer restrictions of paragraph (a) shall not apply to transfers of dairy cows in connection with the assignment of the producer's entire interest in the contract to the extent such assignments of the contract are permitted by the contract.

(c) If a unit includes dairy cows which were leased from another person as of November 8, 1983, the provisions of this section shall apply to such dairy cows, and the word "transfer" as used in this section shall include the return of such cows to the lessor.

(d) Notwithstanding any other provision of this section, a transfer by a producer participating in the program may also be approved if the Administrator, ASCS, or his designee, determines that the transfer will not defeat the goals of the Milk Diversion Program.

[49 FR 363, Jan. 4, 1984, as amended at 49 FR 20643, May 16, 1984; 49 FR 37728, Sept. 26, 1984]

§ 1430.411 Modification of contracts.

(a) Contracts entered into under this subpart may be modified with respect to the amount of reduction required if it is determined that: (1) There would be an excessive reduction in the level of milk production in the United States, or (2) there has been a substantial hardship to producers of beef cattle, dairy cattle, hogs, or poultry sold for slaughter: *Provided, however,* That any reduction made in accordance with clause (2) of this paragraph shall not be so great as to require the producer to make a reduction in excess of 150 percent of the contract reduction for any succeeding quarter of the contract period.

(b) In addition to any modification in the contact which may be specifically provided for in this section, CCC may make such other modifications in the terms and conditions of the contract as may be determined to be necessary to further the goals of the Milk Diversion Program.

§ 1430.412 Amount of payment.

A producer who is determined to be eligible for payments under the provisions of the contract and this subpart shall be eligible to receive a payment of $10 per hundredweight for actual reductions from the milk base in the quantity of milk marketed for commercial use during the contract period, subject to any adjustments provided for in the contract and this subpart, up to the lesser of: (a) The contract reduction (as adjusted, if applicable) plus 3 percent of the milk base, or (b) 30 percent of the milkbase.

§ 1403.413 Time of payment; eligibility for payment.

(a) Quarterly payments may be made to each eligible producer by the county committee at the end of each quarter of the contract period and shall be made on such basis as CCC determines will serve to further contract compliance and avoid overpayment.

(b) A producer shall not be eligible for any payments under the contract and shall refund to CCC any payments previously received under the contract if the producer has failed to make the contract reduction for the contract period within the tolerances provided for in this subpart or has otherwise failed to comply with the terms and conditions of the contract and this subpart.

(c) A final payment shall be made following the fifth quarter of the contract period. This payment shall include payment for the fifth quarter and shall be adjusted for any amounts which are determined to be due and owing to CCC by the producer.

(d) The producer shall report the marketings from the unit to the county ASCS office during the contract period and for each individual quarter of the contract period if the producer makes an application for any quarterly payment. The producer is responsible for the accuracy of such information. In order to be eligible for payment, the producer shall certify that any reported reduction is a net decrease in the marketings of milk for commercial use from the milk base established for the unit and has not been offset by expansion of production and marketings in other production facilities in which the producer has an interest, by a transfer of partial interest in any production facility, or by employment of any scheme or device to qualify for a payment for which such producer would otherwise not be eligible.

(e) The contract shall provide that the producer shall be ineligible for any payment under the contract if the total quantity of milk marketed for commercial use by the producer during the contract period from all units in which the producer has an interest and which are not the subject of a milk diversion contract exceeds the total quantity of such marketings during the period December 1, 1982, through November 30, 1983, with the marketings January through March 1983 being counted twice, from any unit in which the producers had an interest as of January 1, 1984, and which is not the subject of a contract.

(f) For purposes of this section a producer shall be considered to have an interest in any unit which consists in whole or in part of any land, equipment, production facility or dairy cows owned, leased or supplied, in whole or in part by: (1) The producer; (2) any partnership or joint venture other than a corporation of which the producer is a member; (3) any corporation in which the producer holds more than a 20 percent interest; (4) a spouse of the producer, a minor child of the producer, or legal guardian of the such minor child acting on behalf of such minor child; or (5) any trust in which the producer has an interest.

(g) Marketings during the contract period shall be adjusted in such manner as may be specified in the contract to reflect any marked deviation in the composition of milk marketed for commercial use during the contract period from the composition of such marketings during the base period.

§ 1430.414 Assignment of contracts.

Assignments of contracts shall be permitted only upon such terms and conditions as may be specified in the contract. In the event of the death of a producer who has entered into a contract with CCC, the estate may perform the contract and may assign the producer's interest in the contract to the extent that the producer could have made such an assignment.

§ 1430.415 Penalties.

(a) Any producer who fails to make the reduction in the quantity of milk marketed for commercial use as required by the contract shall be liable, in addition to any other amount due under the contract, to a marketing penalty which shall be computed at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies. Increased marketings during the contract period from any unit in which the producer has an interest may be counted as marketings from the contract unit for purposes of determining whether there has been compliance with the contract and whether a marketing penalty should be assessed. Any marketing penalty which is assessed in accordance with this subsection may be reduced in such amount as the Administrator, ASCS, or his designee, determines to be equitable if the failure by the producer to make the required reduction in the marketings of milk for commercial use was unintentional or without the producer's knowledge.

(b) Except for a failure to make the contract reduction, any producer or person who knowingly violates any provision of the Milk Diversion Program shall be liable for a civil penalty of not more than $ 1,000 for each violation.

(c) Any penalty provided for under this section shall be assessed only after notice and opportunity for an informal administrative hearing which shall be conducted in accordance with the administrative appeal regulations found at 7 CFR Part 780.

§ 1430.416 Interest; late payment charges; setoffs and withholding.

(a) Interest shall be charged on any amounts which are determined to be due and owing to CCC from the date of disbursement to the date of refund. The rate of interest shall be the rate of interest which is established in accordance with 7 CFR Part 1403.

(b) Any amounts which are due and owing to CCC under the Milk Diversion Program shall be subject to late payment charges as provided for in 7 CFR Part 1403.

(c) The regulations issued by the Secretary of Agriculture with respect to setoffs and withholdings, 7 CFR Part 13, shall be applicable to the Milk Diversion Program authorized by this subpart.

§ 1430.417 Misrepresentation; scheme or device; fraud.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a Milk Diversion Program determination shall not be eligible for payments under such program and shall refund to the CCC any payments received by such producer with respect to any unit.

(b) A producer shall refund to the CCC all payments received by such producer with respect to the program if it is determined by the State committee, or the county committee with the approval of the State committee, that the producer knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program;

(2) Made any fraudulent representation in connection with the program; or

(3) Misrepresented any fact affecting a program determination.

(c) The provisions of this section shall be applicable in addition to any liability under criminal and civil fraud statutes.

(d) If the County Committee finds that any person has adopted or participated in any pratice which tends to defeat the purposes of the program, it may withhold, or require to be refunded, all or any part of the payment which otherwise would be due the producer under the program.

§ 1430.418 Appeals.

A producer may obtain reconsideration and review of the determinations made under this subpart in accordance with the Appeal Regulations, 7 CFR Part 780.

§ 1430.419 Performance based upon advice or action of county or State committee.

The provisions of 7 CFR Part 790 relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 1430.420 Miscellaneous provisions.

(a) The contract between CCC and the producer shall contain such other provisions as CCC determines appropriate to carry out the program established by this subpart.

(b) Payments which are earned by a producer may be assigned in accordance with the provisions of 7 CFR Part 709. For the purpose of making an assignment of payment under this section, the phrase "to finance the making a crop" in § 709.3 of Part 709 shall be construed to include the production of milk.

(c) Any payment which is due any person shall be allowed without regard to questions of title under State law and without regard to any claim or lien against the contract unit or any milk produced from the unit, and the proceeds thereof, which may be asserted by any creditor except agencies of the United States Government.

(d) All records of the producer which relate to the performance and compliance by the producer with the provisions of the contract and this subpart shall be maintained for three years from the date of final payment by CCC under the contract.

(e) The producer shall execute all certifications specified in the contract or required by CCC or any other representative of the Department in the administration of this subpart.

§ 1430.421 Other regulations.

The following regulations shall also be applicable to this subpart:

(a) 7 CFR Part 13—Setoffs and Witholding;

(b) 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(c) 7 CFR Part 780—Appeal Regulations;

(d) 7 CFR Part 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(e) 7 CFR Part 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program;

(f) 7 CFR Part 796—Harvesting of Marihuana or Other Such Drug-Producing Plants for Illegal Use; and

(g) 7 CFR Part 1430—Interest on Delinquent Debts.

§ 1430.422 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0114.

PART 1434—HONEY

Subpart—Honey Price Support Regulations Governing 1982 and Subsequent Crops

Sec.

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AUTHORITY: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054 (7 U.S.C. 1446, 1421).

Subpart—Honey Price Support Regulations Governing 1982 and Subsequent Crops

SOURCE: 47 FR 35170, Aug. 13, 1982, unless otherwise noted.

§ 1434.1 General statement.

This subpart contains the regulations which set forth the requirements with respect to price support for the 1982 and each subsequent crop of extracted honey for which a price support program is authorized. Price support will be made available through loans on and purchases of eligible honey. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing eligible honey in approved warehouse storage. The producer may also sell to the Commodity Credit Corporation any or all of the producer's eligible honey which is not security for a price support loan by delivering the honey to the Corporation. As used in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

§ 1434.2 Administration.

(a) *Responsibility.* The Cotton, Grain, and Rice Price Support Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field the regulations in this subpart will be administered by State and county Agricultural Stabilization and Conservation committees (hereinafter called State and county committees), the Kansas City

ASCS Commodity Office, and the ASCS Management Field Office.

(b) *Documents.* Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called "county office") designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approve documents under this program, except where otherwise specified in the regulations in this subpart. These authorized individuals may also execute releases or otherwise obtain the release of record of financing statements and chattel mortgages filed by CCC to protect security in agricultural loan commodities upon payment in full of the loan involved. Such individuals may execute indemnity agreements on behalf of CCC where any county recording officer deems such indemnity agreement necessary to releasing a mortgage or security agreement of record.

(c) *Limitation of authority.* The authority conferred by this subpart to administer the honey price support program does not include authority to modify or waive any of the provisions of this subpart.

(d) *State committee.* The State committee may take any action which is authorized or required by this subpart to be taken by the county committee, but which has not been taken by such committee. The State committee may also: (1) Correct or require a county committee to correct any action which was taken by such county committee, but which is not in accordance with this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with this subpart.

(e) *Executive Vice President, CCC.* No delegation of authority herein shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this subpart or from reversing or modifying any determination made pursuant to a delegation of authority in this subpart.

§ 1434.3 Eligible producers.

(a) *Producer.* An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who extracts honey produced by bees owned by the producer.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or a ward of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or purchase documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a financially responsible person; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to Part 1425 of this chapter, to obtain price support on a crop of extracted honey may obtain price support on the eligible production of such crop of the honey on behalf of its members. The term "producer" as used in this subpart and on applicable price support forms shall refer both to an eligible producer as defined in paragraphs (a), (b), and (c) of this section and to such an approved cooperative marketing association.

(e) *Approval by county committee.* A producer may be denied price support on farm-stored honey if the producer has:

(1) Been convicted of a criminal act;

(2) Made a false misrepresentation in connection with any price support program;

(3) Made unlawful disposition of any loan collateral; or

(4) Caused the county committee difficulty in settling a loan due to failure to comply with the terms and conditions set forth in the note and security agreement or other instrument used in obtaining price support.

The county committee may deny price support to such producer until it is satisfied that CCC will be fully protected against any possible loss other than loss assumed by CCC under the regulations in this subpart.

(f) *Joint loans*—(1) *Farm storage.* Two or more eligible producers may obtain a joint loan on eligible honey produced and extracted by them if such honey is stored in the same farm storage facility. However, in lieu of obtaining a joint loan, each producer may obtain an individual loan on that producer's share of the honey stored in separate containers if such producer obtains an agreement from the other producers having honey stored in the facility stating that they are aware that a portion of the honey in the storage facility is being placed under price support loan and they will obtain permission from the county office before removing any honey from the facility.

(2) *Warehouse storage.* Two or more producers may obtain a warehouse storage loan if the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan documents and in the applicable regulations in this subpart.

(g) *Warehouse storage loans to warehousemen.* Except as provided in § 1434.10, warehouse storage loans may be made to a warehouseman who tenders to CCC, in the capacity as a producer, warehouse receipts issued by the warehouseman on honey produced and extracted by the warehouseman where the issuance and pledge of such warehouse receipts is permitted under State law.

§ 1434.4 Eligibility requirements.

(a) *Requesting price support.* In order to obtain price support on eligible honey, a producer must request a price support loan or notify the county office of an intention to sell honey by delivering a completed Purchase Agreement (Form CCC-614), no later than January 31 of the year following the year in which the honey was produced and extracted.

(b) *Beneficial interest.* To be eligible for price support, the beneficial interest in the honey must be in the producer tendering the honey as security for a loan or for purchase and must always have been in the producer or in such producer and a former producer whom the producer succeeded before such honey was extracted. However, heirs shall be eligible for price support as producers whether such succession occurs before or after extraction of honey, if such heirs:

(1) Succeed to the beneficial interest of a deceased producer;

(2) Assume the decedent's obligation under a loan if a loan has already been obtained; and

(3) Assure continued safe storage of the honey if such honey has been placed under farm storage loan.

A producer shall not be considered to have divested the beneficial interest in the honey if the producer enters into a contract to sell or gives an option to buy the honey and, under such contract or option, the producer retains control, risk of loss, and title to the honey. Honey purchased by a producer shall not be eligible for price support, except in the case of heirs of a deceased producer. If price support is made available through an approved cooperative marketing association, the beneficial interest in the honey must always have been in the producer-members who delivered the honey to the approved cooperative or its member cooperatives or must always have been in them and former producers whom they succeeded before the honey was extracted. Honey so delivered to a cooperative marketing association shall not be eligible for price support if the producer-members who delivered the honey to the cooperative or its member cooperatives do not retain the right to share in the proceeds from the marketing of the honey as provided in Part 1425 of this chapter.

(c) *Succession of interest.* To meet the requirements of succession to the beneficial interest of a former or deceased producer under paragraph (b) of this section, the rights, responsibilities, and interest of the former producer with respect to the ownership of the bees which produced the honey shall have been substantially assumed by the person claiming succession. Mere purchase or inheritance of the honey before extraction without acquisition of any additional interest in the production unit shall not constitute succession to such beneficial interest.

(d) *Doubtful cases.* Any producer or cooperative in doubt as to whether the beneficial interest in the honey complies with the requirements of this section shall, before requesting price support, make available to the county committee all pertinent information which will permit a determination with respect to the beneficial interest to be made by CCC.

(e) *Redeemed loan collateral.* Before the final availability date, a producer may reoffer as security or repledge as collateral for a new loan any honey that has been previously so mortgaged or pledged.

§ 1434.5 Miscellaneous requirements.

(a) *Security.* The county office shall file or record, as required by State law, all security agreements which cover honey under loan and stored on leased premises. The cost of filing and recording shall be for the account of CCC.

(b) *Revenue stamps.* Farm Storage Note and Security Agreements, and Warehouse Storage Note and Security Agreements must have State and documentary revenue stamps affixed thereto where required by law.

(c) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising honey which is otherwise eligible for price support under a program to which this subpart is applicable authority to exercise, on the behalf of the producer, any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's respresentative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer.

§ 1434.6 Availability, disbursement, maturity, and expiration of loans.

(a) *Where to request price support.* A producer shall request price support on farm-stored honey at the county office of the county where the honey is stored. A producer shall request price support on warehouse-stored honey at the county office of the county where the warehouse is located or at the county office of the county where the beekeeper is headquartered. An approved cooperative marketing association must request price support at the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office. In the case of an approved cooperative marketing association having operations in two or more States, requests may be made at the county office for the county in which its principal office for each such State is located.

(b) *Availability, maturity, and expiration dates.* Price support loans and purchase agreements are available to producers as soon as the loan and purchase rates are announced but not earlier than April 1 of the year in which the honey is produced and extracted and not later than January 31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. Purchase agreements expire and price support loans mature on demand but not later than April 30 of the year following the year in which the honey is produced and extracted. However, when the final date of expiration or maturity falls on a nonworkday for county offices the applicable final date shall be extended to include the next workday.

(c) *Disbursement of loans.* Disbursement of loans will be made by county offices by drafts drawn on the account of CCC or by credit to the producer's account, except that loans may be disbursed by approved servicing banks to approved cooperative marketing associations. The loan documents shall not be presented for disbursement unless the honey covered by the mortgage or pledge is in existence, has been extracted and is in approved storage. If the honey was not either in existence, extracted, or in approved storage at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly by the producer.

§ 1434.7 Eligible honey.

Honey must meet the requirements of this section in addition to other applicable eligibility requirements of this subpart in order to be eligible for a loan or for delivery under a loan or purchase. Honey described in § 1434.8 is not eligible for price support.

(a) *Production.* The honey must have been produced in the United States by an eligible producer during the calendar year for which price support is requested and extracted on or before December 31 of such calendar year.

(b) *Floral source.* Honey from the floral sources listed below and honey having similar flavor shall be eligible for price support and shall be classed as follows:

(1) *Table honey.* Table honey means honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country. Such sources include alfalfa, bird's-foot trefoil, blackberry, brazil brush, catsclaw, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(2) *Nontable honey.* Nontable honey means honey having a predominant flavor of limited acceptability for table use but which may be considered suitable for table use in areas in which it is produced. Such honeys include those with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Chinese tallow, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, macadamia, mangrove, manzanita, mint, partridge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip-poplar, wild cherry, and similarly-flavored honey or blends of such honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(c) *Containers.* The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. All containers shall meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder.

(1) *Five-gallon.* The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) *Steel drums.* Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which

have been reconditioned inside and outside. They must be clean, treated to prevent rusting, and fitted with gaskets which provide a tight seal.

(d) *Moisture requirements.* To be eligible for price support, honey must not contain in excess of 18.5 percent moisture.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983; 49 FR 24879, June 18, 1984]

§ 1434.8 Ineligible honey.

(a) *Floral source.* Honey from the following floral sources is not eligible for price support regardless of whether it meets other eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for loan or delivery for purchase.

(b) *Contamination or poisonous substances.* Honey which is contaminated or which contains chemicals or other substances poisonous to humans or animals is not eligible for price support.

(c) *Containers.* Honey which is stored: (1) In steel drums having a tare weight less than 38 pounds or having removable liners of polyethylene or other materials, (2) in bung-type drums, or (3) in bulk tanks, is not eligible for price support regardless of whether it meets other eligibility requirements.

(d) *Heat damage.* Honey which has been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization shall be ineligible for price support.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983; 48 FR 34416, July 29, 1983]

§ 1434.9 Approved storage.

(a) *Loans.* Loans will be made only on honey in approved storage as defined in this section.

(1) *Farm storage.* Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by the county committee to be under the control of the producer and to afford safe storage for honey. Producers may also obtain loans on honey packed in eligible containers and stored on leased space in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be placed under loan and which is stored on such leased space is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name and lot number so as to identify the honey from other honey stored in the structure. If the honey which is to be pledged as collateral for a price support loan is stored on leased space, a copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the honey to enter on the premises to inspect and examine the honey and shall permit a reasonable time to such persons to remove the honey from the premises upon the termination of the lease.

(2) *Warehouse storage.* Approved warehouse storage or an approved warehouse shall consist of (i) a public warehouse for which a CCC Honey Storage Agreement is in effect and which is approved for price support purposes or (ii) a warehouse operated by an approved cooperative as defined in § 1434.3(d) and licensed to store honey under the United States Warehouse Act.

(b) *Segregation of loan collateral.* If the honey located in a storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing each such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a price support loan which is stored in the same structure.

§ 1434.10 Warehouse receipts.

(a) *General.* Warehouse receipts representing honey to be placed under a warehouse storage loan, delivered in satisfaction of a farm storage loan, or delivered in accordance with purchase agreements must meet the requirements of this section, any other requirements contained in the regulations in this subpart, and in any notice in the FEDERAL REGISTER pertaining thereto. A separate warehouse receipt must be submitted for each class, color, floral source, quality, and grade of honey.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and indicate that the honey is stored identity preserved in eligible containers. The receipts must be negotiable, must cover eligible honey actually in storage in the warehouse, and must be registered or recorded with appropriate State or local officials when required by State law.

(c) *Entries.* Each warehouse receipt or extracted honey inspection and weight certificate properly identified with the warehouse receipt must be issued in accordance with the Honey Storage Agreement or United States Warehouse Act, if applicable, and must show the following information:

(1) That the honey is stored identity preserved in containers;

(2) Number of containers;

(3) Size of containers;

(4) Gross weight;

(5) Net weight;

(6) Lot number;

(7) Average moisture for quantity represented by the receipt; and

(8) Class, color, floral source, and grade.

(d) *Extracted honey inspection and weight certificate.* When an extracted honey inspection and weight certificate is issued, it must show the following additional information:

(1) Warehouse receipt number;

(2) Lot number;

(3) Number and size of containers;

(4) Class, color, floral source, and grade; and

(5) Net weight.

(e) *Where warehouseman is also owner.* If the warehouse receipt is issued for honey which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's honey is invalid under State law, the warehouseman may offer the honey to CCC for loan or purchase if such warehouse is licensed and operating under the United States Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the honey to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(f) *Insurance.* Each warehouse receipt representing honey stored in an approved warehouse which has a honey storage agreement with CCC shall indicate that the honey is insured in accordance with such agreement.

§ 1434.11 Warehouse charges.

Before the honey is placed under warehouse storage loan or acquired by purchase by CCC, the producer shall arrange for payment of storage, inspection, and all other charges (except receiving and loading-out charges in the warehouse in which the honey is acquired by CCC) accruing through the loan maturity date for the honey. Such charges shall include charges incident to weight and grade determinations on identity-preserved honey. CCC will not assume warehouse storage charges accruing through the loan maturity date for loans on honey acquired by CCC.

§ 1434.12 Applicable forms.

The forms for use in connection with this program shall be as follows: Form CCC-614, Purchase Agreement; Form CCC-677, Farm Storage Note and Security Agreement; Form CCC-678, Warehouse Storage Note and Security Agreement; Form CCC-679; Lien Waiver; Form CCC-681; Authorization for Removal of Farm Storage Collateral; Form CCC-681-1, Marketing Authorization for Loan Collateral; Form CCC-691, Commodity Delivery Notice; Form CCC-692, Settlement Statement; Form CCC-864, Lienholder's Subordination Agreement; and such other forms as may be prescribed by CCC. These forms may be obtained in State and county offices.

§ 1434.13 Liens.

If there are any liens or encumbrances on the honey, waivers must be obtained which fully protect the interest of CCC even though the liens or encumbrances may be satisfied from the loan or purchase proceeds. Notwithstanding the foregoing provisions, a lienholder may execute a Lienholders Subordination Agreement (Form CCC-864) with CCC, in lieu of waiving a prior lien on the honey tendered as security for a loan, whereby the lienholder subordinates the security interest to the rights of CCC in the honey serving as collateral for the loan or such other quantity of the honey as is delivered to CCC in satisfaction of a loan under applicable program provisions. No additional liens or encumbrances shall be placed on the honey after the loan is approved.

§ 1434.14 Fees and charges.

(a) *Loan service fee.* A producer shall pay a loan service fee of $10 for each farm storage loan disbursed plus $1 for each lot over one and $6 for each warehouse storage loan disbursed (plus $1 for each warehouse receipt over one). The loan service fee is not refundable.

(b) *Delivery charge.* A delivery charge of 1 cent per hundredweight, in addition to the service charge, shall be paid by producers on the quantity of honey delivered to CCC. In the case of farm storage loans, identity-preserved warehouse storage loans, and purchases, such delivery charge shall be paid at time of settlement.

§ 1434.15 Setoffs.

(a) *Farm storage facilities and drying equipment loans.* If the provisions of a note evidencing any loan made to a producer by CCC with respect to farm storage facilities and drying equipment permit any installments of such loan to be satisfied out of the amounts otherwise due a producer under the program, the amounts shall be applied to such installments after deduction of applicable fees and charges and amounts due prior lienholders.

(b) *Producers listed on claims control record.* If a producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the ASCS county claims control record, any amounts otherwise due the producer under the program provided in this subpart shall be applied to such indebtedness in accordance with the regulations at 7 CFR 13 after deduction of any amounts which may be payable on loan installments for farm storage facilities or drying equipment and other amounts as provided in paragraph (a) of this section.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right the producer might otherwise have to contest the indebtedness involved in the setoff action either by administrative appeal or by legal action.

§ 1434.16 Determination of quantity.

(a) *For loan purposes.* The estimated quantity of farm-stored honey and the quantity of warehouse-stored honey placed under loan shall be determined as provided in §§ 1434.23 and 1434.24. Estimates of the quantity of farm-stored honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

(b) *At time of acquisition*—(1) *Farm storage.* The quantity of honey acquired by CCC as the result of a loan forfeiture or pursuant to a purchase agreement shall be determined by weighing the honey delivered under the direction of the State committee. The quantity of honey acquired in 5-gallon cans shall be determined by using a tare weight of 2.5 pounds for each can. The quantity of honey acquired in 55-gallon drums shall be determined by using a tare weight of 53 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of the drum shall not be less than 42 pounds. Title to the containers shall vest in CCC.

(2) *Warehouse storage.* In the case of honey packaged in eligible containers, the quantity of honey acquired by CCC in approved warehouse storage as the result of a loan forfeiture or pursuant to a purchase agreement shall be the net weight shown on the warehouse receipt or the weight determined by a representative of CCC. Title to the containers shall vest in CCC.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 15121, Apr. 7, 1983]

§ 1434.17 Determination of quality.

(a) *Quality for loan*—(1) *Farm storage.* Loans on farm-stored honey will be made on the basis of the floral source, color, and class (table or nontable) of the honey as declared and certified by the producer on the Farm Storage Worksheet at the time the honey is placed under loan.

(2) *Warehouse storage.* Loans on warehouse-stored honey will be made on the basis of the class, floral source, grade, and color of the honey as shown on the warehouse receipt or on the extracted honey inspection and weight certificate accompanying the warehouse receipt representing such honey.

(b) *Quality for settlement*—(1) *Farm storage in eligible containers.* When honey is delivered to CCC in eligible containers from farm storage, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed Honey on the basis of samples drawn by ASCS representatives supervising delivery. Samples shall not be drawn until the producer has designated all lots. Single containers shall not be considered as lots unless necessitated by color or floral source. The cost of quality and color determinations for a maximum of four lots shall be for the account of CCC.

(2) *Identity-preserved warehouse-stored.* When honey stored identity-preserved in containers in an approval warehouse is delivered to CCC, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed honey on the basis of samples drawn by ASCS representatives supervising delivery. The cost of such determination shall be for the account of CCC.

(c) *Segregation by color.* Table honey in eligible containers shall, insofar as is practicable, be segregated into lots by color to conform with the color categories which are set forth in the ASCS Specifications for Unprocessed Honey.

(d) *Segregation by classes.* If the honey in eligible containers is not segregated so that it can be classified as table honey, the rate for settlement under a loan or purchase shall be based on the support rate for nontable honey.

(e) *Blends.* In the case of blends of table and nontable honeys, the rate for settlement under a loan or purchase shall be based on the support rate for nontable honey.

[47 FR 35170, Aug. 13, 1982, as amended at 48 FR 34416, July 29, 1983; Amdt. 3, 50 FR 4636, Feb. 1, 1985]

§ 1434.18 Interest rate.

(a) Except as provided in paragraph (b) of this section, price support loans for honey shall bear interest at the rate announced in a notice which is published in the FEDERAL REGISTER.

(b) Price support loans which have not been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate which is assessed by CCC with respect to late payment charges on delinquent debts in accordance with 7 CFR 1403.5. Such interest will be assessed until the loan is settled beginning on the date immediately following the loan maturity date or the original required settlement date of called loans, whichever is applicable.

[48 FR 15121, Apr. 7, 1983]

§ 1434.19 Transfer of producer's interest prohibited.

(a) *Warehouse storage loans.* The producer shall not transfer either the remaining interest in or the right to redeem honey pledged as security for a warehouse storage loan nor shall anyone acquire such interest or right. The producer's interest or right of redemption will not be deemed to have been transferred in violation of this paragraph if, under § 1434.25(c), the producer or the producer's properly authorized agent has filed a statement with the county office authorizing the release of such warehouse receipts to others and the loan is repaid within 15 days following the date of such authorization.

(b) *Farm storage loans.* The producer shall not transfer either the remaining interest in or right to redeem honey mortgaged as security for a farm storage loan nor shall anyone acquire such interest or right. Subject to the provisions of § 1434.25, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers or prospective purchasers at the county office.

§ 1434.20 Insurance.

CCC will not require the producer to insure the honey placed under a farm-stored loan. However, if the producer insures such honey and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the honey involved in the loss.

§ 1434.21 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey placed under a farm storage loan or identity-preserved warehouse storage loan. Notwithstanding the foregoing, any such loss occurring and reported to the county office after disbursement of the loan funds and before redemption or delivery to CCC will be assumed by CCC. Losses will be assumed to the extent of the settlement value at the time of destruction of the quantity of honey destroyed up to a quantity not in excess of the quantity required to secure the outstanding loan. If the honey is not destroyed, CCC will only assume an amount equivalent to the extent of the loss or damage as determined by CCC, less any insurance proceeds to which CCC may be entitled and the salvage value of the honey if the producer establishes to the satisfaction of CCC each of the following conditions: (a) The physical loss or damage occurred without fault or negligence on the part of the producer or any other person having control of the storage structure;

(b) The physical loss or damage resulted solely from an external cause (other than insect infestation, rodents, or vermin), such as theft by a person not entrusted with possession of the honey and occurring without the knowledge or consent (expressed or implied) of the producer, or fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God;

(c) The producer has given the county office immediate notice of such loss of damage before redemption or delivery to CCC; and

(d) The producer has made no fraudulent representation in the loan documents or in obtaining the loan. No physical loss or damage occurring before the date of disbursement of the loan funds to the producer will be assumed by CCC.

§ 1434.22 Personal liability of the producer.

(a) *Fraud relating to farm storage and warehouse storage loans and unlawful dispositions.* The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the honey by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable upon demand and, aside from any additional liability under Federal criminal and civil fraud statutes, the producer shall be personally liable for the amount of the loan, any additional amount paid to the producer in connection with the honey, and all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on any such amounts. Notwithstanding the provisions of section 6(b) of the Farm Storage Note and Security Agreement (Form CCC-677) and section 6(b) of the Warehouse Storage Note and Security Agreement (Form CCC-678), if a producer has made any such fraudulent representation with respect to or unlawful disposition of the honey pledged as collateral for a price support loan, the amount with which the producer will be credited for any honey delivered to or removed by CCC will be the following:

(1) In the case of farm storage loans, the market value of the honey as determined by CCC as of the date of delivery to or removal by CCC, or the loan settlement value, whichever is the lower;

(2) In the case of warehouse storage loans, the market value of the honey at the close of the market on the final date for repayment or the loan settlement value, whichever is the lower; or

(3) If the honey is sold by CCC in order to determine its market value, the sales price, less any costs sustained by CCC, or the loan settlement value, whichever is the lower.

If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the honey or part thereof delivered to CCC or removed by CCC shall be the same as the settlement value for eligible honey acquired by CCC as provided in this subpart.

(b) *Fraud relating to purchases.* If the producer has made a fraudulent representation in a price support purchase by CCC or in the purchase documents, the producer shall be personally liable, aside from any additional liability under Federal criminal or civil fraud statutes, for any loss which CCC sustains with respect to the honey which has been delivered under the purchase agreement. For the purpose of this program, such loss shall be deemed to be the amount paid to the producer for the honey delivered to CCC under the purchase agreement, as well as all costs which CCC would not have incurred had it not been for the producer's fraudulent representation, together with interest on such amounts, less the lowest of the following:

(1) The market value, as determined by CCC, of the honey as of the close of the market on the date of delivery;

(2) The sales price if the honey is sold in order to determine its market value; or

(3) The purchase settlement value.

(c) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement or in settlement thereof exceeds the amount authorized under these regulations or the amount determined from the support rate for the applicable crop year, the producer shall be personally liable for repayment of the amount of such excess.

(d) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from delivering to CCC honey containing mercurial compounds or other substances poisonous to humans, animals, or food commodities which are contaminated.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required to be remitted to CCC in accordance with the provisions of this part, the producer shall be personally liable for repayment of the amount of such deficiency.

(f) *Joint loans.* In the case of joint loans, each producer signing the note shall be jointly and severally liable for any personal liability which may result due to the application of the provisions of this section.

§ 1434.23 Quantity for warehouse storage loan.

The amount of a loan on the quantity of eligible honey packaged in eligible containers and stored identity-preserved in an approved warehouse shall be based on a percentage of the net weight specified on the warehouse receipt representing such honey which is pledged as security for the loan. Such percentage shall not exceed 95 percent of the weight so specified.

§ 1434.24 Quantity for farm storage loans.

(a) *Maximum loan amount.* Farm storage loans shall not be made on more than a percentage (hereinafter called the "loan percentage"), as established by the State committee, of the certified or measured quantity of the eligible honey stored in approved farm storage and covered by the note and security agreement. The maximum loan percentage shall not exceed 90 percent of the measured or certified quantity. The State committee shall establish the loan percentage each year on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. In determining the loan percentages the State committee shall consider general honey-producing conditions, factors affecting quality peculiar to an area within the State, and climatic conditions affecting storability. The loan percentages established by the State committee may be lowered by the county committee on an individual basis when determined to be necessary in order to provide CCC with adequate protection. The county committee shall consider:

(1) The condition or suitability of the storage structure;

(2) The condition of the honey;

(3) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the honey;

(4) Any disagreement with respect to the quantity of honey to be placed under loan; and

(5) Such other factors which relate to the preservation or safety of the loan collateral.

(b) *Less than maximum loan amount.* Farm storage loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the mortgage shall cover all of the honey in the lot on which the loan is made. When the loan percentage is lowered for one or more of the hazards listed in paragraph (a) of this section, the producer shall be notified in writing that CCC will not assume any loss or damage to the loan collateral resulting from the particular hazards to which the structure was exposed.

(c) *Transfer from farm storage loans to warehouse storage loans.* Upon request by the producer, the county committee may approve the transfer of honey or part thereof which is under a farm storage loan to a warehouse storage loan at any time during the loan period. Liquidation of the farm storage loan or part thereof shall be made through the pledge of warehouse receipts for the honey placed under warehouse storage loan and the immediate payment by the producer of the amount by which the warehouse storage loan is less than the farm storage loan or part thereof plus interest. Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse storage loan shall be the maturity date applicable to the farm storage loan which was transferred to such warehouse storage loan.

(d) *Packaged in eligible containers.* Loans shall be made on not more than 90 percent of the estimated quantity of eligible honey packaged in eligible containers in approved farm storage.

(e) *Producer certification.* In addition to loan quantity determinations based on measurement as provided in paragraph (a) of this section, determinations may be made on the basis of the quantity of honey which an eligible producer certifies in writing on Form CCC-666 is eligible if the honey is in approved farm storage and available for loan purposes.

(f) *Incorrect producer certification.* (1) If the county committee determines by measurement or otherwise that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan. The producer shall have ten days to settle the loan, except that the producer may request reconsideration of the loan call and provide information regarding the circumstances leading to the incorrect certification. The county committee may reinstate the producer's loan if:

(i) The circumstances are of a highly meritorious nature;

(ii) The producer acted in good faith;

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity; and

(iv) The producer repays the amount of any overdisbursement.

If the loan is called, the county committee may refuse to approve any further farm-stored loans for honey produced by the producer through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the producer has incorrectly certified such quantities on more than one occasion, the county committee shall call the loan(s) involved and approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm-stored loans to the producer for more than one year.

(g) *Unauthorized removal.* If there has been unauthorized removal of any part of farm-stored collateral, the county committee shall, on the first offense, call the loan involved. The producer shall have ten days to settle the loan, except that the producer may request reconsideration of the call and provide information regarding the circumstances leading to the unauthorized removal. The county committee may reinstate the producer's loan if:

(1) The circumstances leading to the unauthorized removal are of a highly meritorious nature;

(2) The producer acted in good faith;

(3) The producer did not knowingly remove the honey under loan; and

(4) The producer repays the loan with respect to the quantity of the collateral which had been removed.

If the loan is called, the county committee may refuse to approve any further farm-stored loans for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred. If the unauthorized removal is the second offense, the county committee shall call the loan involved and not approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the unauthorized removal occurred.

§ 1434.25 Release of the honey under loan.

(a) *Obtaining release—farm storage.* A producer shall not remove any loan honey from farm storage until prior written approval for such removal has been received from the county committee on one of the applicable forms listed in § 1434.12. A producer may at any time obtain a release of all or part of the honey remaining under loan by paying to CCC the amount of the loan which had been made by CCC to the producer with respect to the quantity of the honey released, plus interest. When the proceeds of a sale of honey are needed to repay all or part of the loan, see § 1434.19(b).

(b) *Release of farm storage note and security agreement.* The note and security agreement shall not be released by CCC until the loan has been satisfied in full. After satisfaction of a loan, the county executive director shall release CCC's security interest in the honey.

(c) *Obtaining release—warehouse storage loans.* The producer may arrange with the county office for release of all or part of the honey under warehouse storage loan on or prior to maturity date of such loan by repayment of the amount of the loan with respect to the quantity of the honey to be released plus interest. Each partial release must cover all of the honey represented by one warehouse receipt. Subject to provisions of § 1434.5(c), warehouse receipts redeemed by the producer upon repayment of the loan shall be released only to the producer or the producer's authorized agent. However, redeemed warehouse receipts may be released to persons designated in a written authorization filed with the county office by the producer or the producer's properly authorized agent and dated within 15 days prior to the date of repayment.

§ 1434.26 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to pay off the loan or deliver the honey under loan to CCC. Deliveries shall be made in accordance with written instructions issued by the county office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity of eligible honey in excess of the larger of (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of honey having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity determined shall be made as provided in § 1434.29. Delivery points shall be limited to those approved by the ASCS Kansas City Commodity Office.

(b) *Notice to county committee.* If the producer desires to deliver the honey to CCC, the producer must give the county committee notice in writing of intention to do so within a reasonable time prior to the applicable maturity date.

(c) *Honey going out of condition.* If, prior to delivery to CCC, the honey in approved farm storage is going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that:

(1) The honey is going out of condition or is in danger of going out of condition;

(2) The honey cannot be satisfactorily conditioned by the producer; and

(3) Delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination.

When delivery is completed, settlement shall be made subject to the provisions of §§ 1434.21 and 1434.22 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* When considered necessary to protect the interest of CCC or when requested by the producer, the county committee may call the loan and accept delivery of the honey prior to the loan maturity date.

(e) *Storage deduction for early delivery.* If the loan maturity date is accelerated upon request of the producer and the acceleration is approved by CCC, the settlement value of the honey shall be reduced by one-sixty of 1 cent per pound per month or fraction thereof from the earlier of (1) the date delivery is accomplished or (2) the final date for delivery as shown in the delivery instructions up to and including the original loan maturity date.

§ 1434.27 Liquidation of warehouse storage loans.

If a producer does not repay the loan indebtedness upon maturity of the loan, CCC shall have the right to sell or acquire title to the honey pledged as security for the loan indebtedness.

§ 1434.28 Purchase from producers.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the eligible honey which is not mortgaged to CCC under a farm storage loan or pledged to CCC under a warehouse storage loan: *Provided,* That the producer executes and delivers to the county office a Purchase Agreement (Form CCC-614) indicating the approximate quantity of honey to be sold to CCC no later than January 31 of the year following the year in which the honey was produced and extracted. The producer is not obligated, however, to complete the sale by delivery of any quantity of the honey to

CCC upon expiration of the purchase agreement. Delivery points for purchases from other than approved warehouse storage shall be limited to those approved by the ASCS Kansas City Commodity Office. Settlement of the quantity not to exceed 110 percent of the quantity shown on the Purchase Agreement shall be made as provided in § 1434.29.

(b) *Delivery period.* (1) In the case of eligible honey not in an approved warehouse, the producer must make delivery of the honey the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office. Delivery shall be made to the location specified in such instructions. Notwithstanding any of the provisions of this section, in the case of eligible farm-stored honey covered by an approved Purchase Agreement (Form CCC-614), the county committee may, if requested by the producer, authorize early delivery of the honey if the producer loses control of the storage structure or if there is danger of flood or damage to the storage structure making it unsafe to continue storage of the honey on the farm. In the event of such purchase and delivery of the honey to CCC, the settlement value of the honey shall be reduced as provided in paragraph (e) of § 1434.26.

(2) In the case of eligible honey stored in an approved warehouse, the producer must submit to the county office, not earlier than ten days before the expiration date of the purchase agreement nor later than the day after such expiration date, warehouse receipts for the quantity of honey the producer elects to sell to CCC.

§ 1434.29 Settlement.

(a) *General.* Except as provided in §§ 1434.21, 1434.22, and paragraph (b) of this section, settlement with the producer for eligible honey acquired by CCC under loan or purchase will be made on the basis of the quantity, floral source, class, quality, grade, and color of such honey as provided in this section and other applicable provisions of this subpart. The settlement value of honey shall be the product of the support rate for the class, floral source, grade, and color, times the quantity acquired at the time of settlement adjusted by the applicable discounts. The support rate per pound of honey at which settlement will be made shall be the rate determined annually and available in ASCS County offices.

(b) *Warehouse storage—Identity preserved.* Settlement for eligible honey stored identity preserved in an approved warehouse and acquired by CCC shall be made on the basis of the net weight shown on the extracted honey inspection and weight certificate and the class, floral source, color, and grade shown on the inspection certificate.

(c) *Ineligible honey inadvertently accepted by CCC.* If ineligible honey is inadvertently accepted by CCC, the settlement value shall be the market value as of the date of delivery as determined by CCC. The provisions of § 1434.22 shall be applicable to settlement on ineligible honey where there has been a fraudulent representation on the part of the producer.

(d) *Payment of deficiency by producers.* If the settlement value of the honey is less than the amount due on the loan (excluding interest), the amount of any deficiency plus interest thereon shall be paid to CCC. If the deficiency is not promptly paid, CCC may, in addition to any of its other rights, satisfy the amount of such deficiency plus interest out of any payment which would otherwise be due the producer under any agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

(e) *Payments of amount due producer.* If the settlement value of the honey delivered to CCC exceeds the amount due on the loan (excluding interest), such excess amount shall be paid to the producer. Any payment due the producer on either a loan or purchase will be made by draft drawn on the account of CCC by the county office.

(f) *Storage where CCC is unable to take delivery.* A producer may be required to retain and store the honey that is serving as collateral for a loan or subject to a purchase agreement for a period of 60 days after the maturity date of a loan or expiration date of a purchase agreement without any cost to CCC. If CCC is unable to take delivery of the honey within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the honey to CCC. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of: (1) The final date of actual delivery or (2) the final date for delivery as specified in the delivery instructions issued to the producer by the county office. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for honey in effect at the delivery point where the producer delivers the honey.

§ 1434.30 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the unpaid amount of the note, interest, and charges) is not satisfied upon maturity of the note, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may similarly be accomplished without the prior removal of the honey from storage. The honey may be processed before sale. CCC may become the purchaser of the whole or any part of the honey hereunder at either a public or private sale.

(b) *When CCC takes title to honey.* At CCC's election, title to all or any part of the unredeemed honey securing the note as CCC may designate shall, without a sale thereof, immediately vest in CCC upon maturity and nonpayment of the producer's note. Whenever CCC acquires title to the unredeemed honey, CCC shall have no obligation to pay for any market value which such honey may have in excess of the loan indebtedness, i.e., the unpaid amount of the note plus interest and charges.

(c) *Payment to producer.* Nothing herein shall preclude CCC from paying the producer or the producer's personal representative or heirs who meet the conditions set forth in § 1434.4 with respect to the following:

(1) Any amount by which the settlement value of the collateral honey exceeds the principal amount of the loan; or

(2) The amount by which the proceeds of sale exceed the loan indebtedness including interest and charges if the collateral honey is sold to third persons as provided in paragraph (a) of this section instead of full title to such collateral honey being acquired by CCC as provided in paragraph (b) of this section.

(d) *Honey sold at less than amount due on loan.* If honey is removed from storage by CCC and is sold pursuant to paragraph (a) of this section at less than the principal amount due CCC on the loan (excluding interest), the producer shall be liable to CCC for the difference between the settlement value of the honey (or the proceeds from the sale of the honey, if higher) and the amount of the loan plus interest. The amount of any deficiency may be set off against any payment which would otherwise be due the producer under any agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

§ 1434.31 Charges not to be assumed by CCC.

CCC will not assume any charges for insurance, storage, packaging, or processing.

§ 1434.32 Handling payments and collections not exceeding $ 9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $ 9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $ 9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

[47 FR 35170, Aug. 13, 1982, as amended at 49 FR 50168, Dec. 27, 1984]

§ 1434.33 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or a purchase, payment shall be made upon proper application to the county office which made the loan or purchase to the persons who would be entitled to such producer's payment under the regulations contained in Part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1434.34 Definitions.

As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires.

(a) *General.* The following words or phrases: "Person," "State committee," "State Executive Director," "county committee," "county executive director," and "farm," respectively, shall each have the same meaning as the definitions of such term in the Regulations Governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this title and any amendment thereto.

(b) *Settlement value.* The term "settlement value" means the value at which settlement is made with the producer on the mortgaged or pledged honey offered for purchase, as determined under the provisions of the regulations in this part.

(c) *Charges.* The term "charges" means all fees, costs, and expenses incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the interest in the loan collateral of CCC or the producer including foreclosure costs.

(d) *County committee.* The term "county committee" means only the committee and not its representative.

(e) *Representative of the county committee and county committee representative.* The terms "representative of the county committee" and "county committee representative" mean a member of the county committee, the county executive director, or a person designated by the county executive director to act in behalf of the county executive director.

(f) *The regulations in this subpart.* The term "the regulations in this subpart" means the regulations in Subpart — 1982 and Subsequent Crops, Honey, together with any amendments thereto and notices published in the FEDERAL REGISTER.

(g) *Request for price support.* The term "request for price support" means a request for loan or execution of Purchase Agreement (Form CCC-614) as applicable.

(h) *Chattel mortgage.* The term "chattel mortgage" means any security instrument which secures a farm storage loan.

§ 1434.35 Kansas City ASCS Commodity Office and ASCS Management Field Office.

(a) Kansas City ASCS Commodity Office, P.O. Box 205, Kansas City, Missouri 64141, will serve all States.

(b) Accounting, recording, and reporting for all States will be handled through ASCS Management Field Office, P.O. Box 205, Kansas City, Missouri 64141.

§ 1434.36 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB numbers 0560-0040 and 0560-0087 have been assigned.

[49 FR 24879, June 18, 1984]

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AUTHORITY: Secs. 201, 301-303 and 401 *et seq.* of the Agricultural Act of 1949, as amended (7 U.S.C. 1446 and 1447 *et seq.*, 1421 *et seq.*), unless otherwise noted.

SOURCE: 42 FR 54557, Oct. 7, 1977, unless otherwise noted.

Subpart—Price Support Payment Program for 1977 Crop Sugarbeets and Sugarcane

§ 1435.1 General.

This subpart sets forth the policies, procedures, and requirements governing price support for 1977-crop sugarbeets and sugarcane. This program, conducted by the Commodity Credit Corporation (referred to as "CCC"), is effective for all 1977 crop sugar marketed prior to November 8, 1977, the date on which a price support loan program for the 1977 crop of sugarbeets and sugarcane was made effective.

[42 FR 64678, Dec. 28, 1977]

§ 1435.2 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President, CCC.

§ 1435.3 Definitions.

(a) "1977 crop" means sugarbeets and sugarcane, the substantial portion of which is harvested in the areas indicated below during the following periods:

Sugar producing area	*Harvesting period*
	Sugarbeets:
All States, excluding California and Arizona.	Sept.-Nov. 1977.
California, excluding southern area.	July 1977-June 1978.
Southern California[1]	Mar.-Sept. 1977.
Arizona, lowland area.	Apr.-Aug. 1977.
Arizona, upland area	Sept. 1977-Jan. 1978.
	Sugarcane:
Florida	Oct. 1977-May 1978.
Louisiana	Do.
Texas	Do.
Hawaii	Calendar year 1977.
Puerto Rico	Do.

[1] Southern California includes the counties of Imperial, San Diego, Riverside, Orange, San Bernardino, and that part of Los Angeles lying south of the San Gabriel Mountains.

(b) "Producer" means the owner of a portion or all of the sugarbeets or sugarcane, including share rent landowners, at the time of harvest and delivery to the processor.

(c) "Processor" means a person who processes sugarbeets into refined sugar or sugarcane into raw sugar, cane syrup, or edible molasses.

(d) "Quantity of sugar marketed" means the pounds of refined beet sugar or cane sugar, raw value, including the cane sugar, raw value equivalent contained in cane syrup and edible molasses marketed from the 1977 crop during the marketing period as defined in paragraph (e) of this section. Refined beet sugar or raw cane sugar shall be deemed to have been marketed during the marketing period, when (1) delivered to the purchaser, or (2) delivered to a carrier for delivery to the purchaser, or (3) title otherwise passes to the purchaser and sugar is committed for delivery, within a period not to exceed 30 days following the end of the marketing period, under a written contract fixing both the quantity and price of sugar to be delivered within such 30-day period; but, in each of the preceding cases, only to the extent that gross proceeds are accounted to the seller; *Provided,* That where raw cane sugar processors market their sugar through a cooperatively-owned refiner, marketing shall not be deemed to have occurred until the raw sugar or refined sugar produced therefrom is marketed by the cooperative. *Provided, however,* That a quantity of sugar which does not meet the requirements of the foregoing provisions of this paragraph shall be considered as being marketed during the marketing period if such quantity of sugar has been committed by the processor under a contractual agreement entered into prior to the end of the marketing period which (i) requires delivery to the purchaser on a scheduled basis or at the option of the purchaser and (ii) specifies the method of determining the price of such sugar; *Provided further,* in the case of sugarcane processors (other than cooperatives) who also refine their raw sugar production into refined sugar, the quantity of cane sugar, raw value, processed from the 1977 crop and which is committed to the refining facility of such processor shall be considered as being marketed during the marketing period.

(e) "Marketing period" means the period commencing when 1977 crop sugar was first marketed and ending on November 7, 1977.

(f) "Gross proceeds" means (1) total receipts from the sales of refined beet sugar, F.O.B. factory, including price differentials for sugar sold in other than bulk form, less all allowances and discounts, and before any freight adjustment; or (2) total receipts from the sales of cane sugar, raw value, F.O.B. factory, less all allowances and discounts, and before any insurance or freight adjustments.

(g) "Raw sugar price equivalent" means the percentage relationship of the average gross proceeds for refined beet sugar to the average gross proceeds for cane sugar, raw value.

(h) "National average market price" means the price of sugar, raw value, computed by dividing gross proceeds, on a raw sugar price equivalent basis, received by all processors by the quantity of sugar, raw value, marketed by all processors during the marketing period.

(i) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing ninety-six degrees by the polariscope.

(j) "Sugarbeets of average quality" means sugarbeets containing 15.44 percent sucrose.

(k) "Sugarcane of average quality" means (1) for Florida, sugarcane containing 14.01 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.69 percent sucrose in normal juice of 78.18 percent purity.

(l) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(m) "Average market price" as used with respect to sugar deemed to be marketed under the second proviso of paragraph (d) of this section means the average market price received by processors for such sugar determined on a monthly basis.

[42 FR 54557, Oct. 7, 1977, as amended at 42 FR 57949, Nov. 7, 1977; 42 FR 64678, Dec. 28, 1977; 43 FR 38687, Aug. 30, 1978; 45 FR 48866, July 22, 1980]

§ 1435.4 Price support levels.

(a) Prices to domestic producers of sugarbeets and sugarcane will be supported during the 1977 crop at average levels estimated to be equivalent to 52.5 percent of the parity prices for sugarbeets and sugarcane as of July 1977.

(b)(1) For producers of sugarbeets, the general support price will be $22.84 per net ton of sugarbeets of average quality;

(2) For producers of sugarcane in Florida, the general support price will

be $18.37 per net ton of sugarcane of average quality;

(3) For producers of sugarcane in Louisiana, the general support price will be $15.90 per net ton of sugarcane of average quality;

(4) For producers of sugarcane in Texas, the general support price per net ton of sugarcane will be the amount determined by multiplying 8.10 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For producers of sugarcane in Hawaii, the general support price per net ton of sugarcane where the delivery point is at the mill will be the amount determined by multiplying 8.91 cents times the total pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by the individual producer.

(6) For producers of sugarcane in Puerto Rico, the general support price per net ton of sugarcane will be determined in accordance with the provisions of Puerto Rico Law No. 426—also known as the Puerto Rico Sugar Law—and the rules issued thereunder by the Sugar Board of Puerto Rico: *Provided, however,* That for any producing area where the specified support price is based on sugarbeets or sugarcane of average quality, that price may be adjusted for sugarbeets or sugarcane of non-average quality on the method agreed upon by the producer and processor, subject to prior approval of the Executive Vice President, CCC, or his designee.

(c) Nothing in paragraph (b) of this section shall be construed as prohibiting normal and traditional customs or practices agreed upon between the producer and processor with respect to the marketing of sugarbeets and sugarcane or the products processed therefrom. Any such custom or practice which would cause any reduction in the specified support price must be reported in writing by the processor to, and approved by, the Executive Vice President, CCC.

§ 1435.5 Method of support.

(a) *General.* The support to domestic producers of 1977-crop sugarbeets and sugarcane will be made available in accordance with the provisions of this subpart by means of payments to processors.

(b) *Coverage.* (1) Payments will be made on the quantity of sugar marketed from the 1977 crop during the marketing period: *Provided,* That in the case of cane syrup which was produced from 1977 crop sugarcane by the open kettle process and marketed during the marketing period, payments will be made to the processor on a basis comparable to that received by raw cane sugar processors within the same producing area. The processor may select either the "first-in first-out" or "last-in first-out" method of inventory accounting for the purpose of identifying sugar of the 1977 crop. Once a method of inventory accounting has been selected by the processor, no change may be made therein.

(2) Notwithstanding any other provision of this subpart, refined beet sugar marketed by a processor after the beginning of the processor's 1977 contract marketing year (which date shall be determined in accordance with the sugarbeet purchase contracts between the processor and producers) but prior to the actual production by the processor of refined beet sugar from the 1977-crop of sugar beets shall, for the purpose of making payments hereunder, be considered to have been marketed from the 1977-crop during the marketing period, subject to the following limitations:

(i) The quantity of sugar claimed as marketed prior to November 8, 1977, shall not exceed the quantity actually produced from the 1977 crop through November 7, 1977;

(ii) The quantity of sugar claimed as marketed under the second proviso of § 1435.3(d) shall not include sugar marketed after the end of the 1977 contract marketing year (which date shall be determined in accordance with the sugar beet purchase contract between the processor and producers); and

(iii) Multi-regional beet processors having more than one contract marketing year shall segregate marketings by contract marketing year and may claim sugar as marketed during a given 1977 contract marketing year only to the extent that such marketings are marketings of sugar produced in the contract marketing region to which such contract marketing year is applicable.

(c) *Rate of payment.* (1) Except for the sugar covered by the second proviso of § 1435.3(d), the rate of payment for the marketing period will be the amount by which the national average market price received by processors for sugar marketed in that period is less than 13.5 cents per pound. No payment will be made if the national average market price received by processors is equal to or greater than 13.5 cents per pound.

(2) In the case of the quantity of sugar covered by the second proviso of § 1435.3(d), the rate of payment for each month will be the amount by which the average market price received by processors reporting such sugar during the month is less than 13.5 cents per pound. No payment will be made if the average market price received by such processors is equal to or greater than 13.5 cents per pound.

(d) *Timing of payment.* Payment to processors will be made by CCC as soon as the information submitted in accordance with § 1435.6(d) is compiled, the national average market price is determined, and the disbursement drafts are prepared, except that in the case of sugar on which payment is due in accordance with subparagraph (c)(2) of this section, payment to processors will be made by CCC as soon as it can be determined that final gross proceeds are accounted to the processor, the information submitted in accordance with § 1435.6(f) is compiled, the average market price received by processors for such sugar is determined, and the disbursement drafts are prepared.

[42 FR 54557, Oct. 7, 1977, as amended at 42 FR 57949, Nov. 7, 1977; 42 FR 64678, Dec. 28, 1977; 45 FR 33598, May 20, 1980]

§ 1435.6 Eligibility for payment.

Before any payment can be approved under this subpart, the following requirements must be met:

(a) Processor shall certify that producers will be paid no less than the applicable support price in accordance with § 1435.4. In the event that the contractual agreement, or normal and traditional method of settlement, between the processor and producer would require a payment greater than the support price, the processor shall be obligated to make such payment over and above the support price to the producer. The processor shall not be obligated to pay the producer any amount greater than the support price if the contractual agreement or normal and traditional method of settlement would require a payment of an amount which is less than the support price.

(b) Processor shall submit a report no later than November 10, 1977, showing the quantity of sugar marketed and the gross proceeds received therefrom during the 12-month period of July 1, 1976, through June 30, 1977.

(c) Processor shall submit a report no later than November 10, 1977, showing the quantity of refined beet sugar or cane sugar, raw value, in inventory at the beginning of the 1977 crop marketing period.

(d) The processor shall submit a report, within 15 days after the end of the marketing period, showing the quantity of sugar marketed from the 1977 crop and the gross proceeds received therefrom.

(e) The processor shall submit written evidence of the agreement referred to in the second proviso of § 1435.3(d) no later than December 30, 1977.

(f) In the case of sugar with respect to which payment is to be based in accordance with § 1435.5(c)(2), processor shall submit a report, within 5 days after the end of the calendar month, showing the quantity of sugar marketed from the 1977 crop and gross proceeds therefrom accounted to the processor during the month. For sugarcane processors (other than cooperatives) who are also refiners and who process their raw sugar production into refined sugar, the quantity applicable to each report shall be the quantity priced by such processors for purposes of settlement with their producers during the reporting period reported.

[42 FR 54557, Oct. 7, 1977, as amended at 42 FR 57949, Nov. 7, 1977; 42 FR 64678, Dec. 28, 1977; 45 FR 48866, July 22, 1980]

§ 1435.7 Cooperative refiners.

For the purposes of computing "gross proceeds" as used herein, a facility which refines raw cane sugar that is cooperatively owned by its raw cane sugar processors shall be allowed to deduct up to 8 percent from gross proceeds to the cooperative-member processors to reflect that portion of returns which can be attributed to their investment in the refining facility. Net non-patronage income shall also be excluded in determining gross proceeds.

§ 1435.8 Computation of national average market price and average market price.

(a) The quantity of sugar marketed and the gross proceeds received therefrom during the 12-month period ending June 30, 1977, as submitted by processors in accordance with § 1435.6(b), will provide the basis for converting gross proceeds received for refined beet sugar to a raw sugar price equivalent basis, except that those processors in Florida and Louisiana who are also refiners of raw cane sugar or speciality sugars or who process sugarcane into cane syrup under the open kettle method will be omitted in the calculation of the national average market price. The percentage by which the average market price received for refined beet sugar exceeds the average market price received for cane sugar, raw value, will be computed.

(b) The determination of the national average market price for the marketing period will be computed on the basis of information received from processors on the quantity of sugar marketed and the gross proceeds received therefrom during the marketing period as provided in accordance with § 1435.6(d). The computation will be as follows:

(1) The percentage determined in accordance with paragraph (a) of this section will be used to reduce the gross proceeds received for refined beet sugar to a raw sugar price equivalent basis;

(2) The gross proceeds received for refined beet sugar, after conversion to a raw sugar price equivalent basis, will be added to the gross proceeds received for cane sugar, raw value;

(3) The total quantity of refined beet sugar marketed will be converted to a raw value by multiplying the quantity by 1.07; and

(4) The total gross proceeds will be divided by the total quantity of sugar, raw value, marketed to obtain the national average market price.

(c) The average market price received by processors for sugar deemed to be marketed under the second proviso of § 1435.3(d) will be computed on the basis of reports submitted pursuant to § 1435.6(f).

[42 FR 54557, Oct. 7, 1977, as amended at 42 FR 57949, Nov. 7, 1977; 42 FR 64678, Dec. 28, 1977]

§ 1435.9 Subterfuge.

The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

§ 1435.10 Setoffs and assignments.

(a) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, Part 13 of this title, shall be applicable to the program.

(b) *Assignments.* Payments may be assigned only to the Farmers Home Administration in accordance with the regulations in Part 709 of this title.

§ 1435.11 Appeals.

A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations in Part 780 of this title.

§ 1435.12 Records and inspection thereof.

ASCS shall reserve the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data used in furnishing reports required by this subpart.

(Approved by the Office of Management and Budget under control number 0560-0093)

[42 FR 54557, Oct. 7, 1977, as amended at 47 FR 745, Jan. 7, 1982]

§ 1435.13 False certifications.

Any false certification which is made for the purpose of enabling a processor to obtain any payment to which he is not entitled, will subject the processor making such certification to liability under applicable Federal civil and criminal statutes.

§ 1435.14 Forms.

Processors shall submit the reports required by this subpart on Form SU-1, "Sugar Processor Certification," to the Executive Vice President, CCC.

Subpart—Price Support Loan Program for 1977 Crop Sugarbeets and Sugarcane

SOURCE: 42 FR 58734, Nov. 11, 1977, unless otherwise noted.

§ 1435.15 General statement.

This subpart contains the regulations which set forth the requirements with respect to price support for the 1977 crop of sugarbeets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by the pledge of eligible sugar in eligible storage.

§ 1435.16 Administration.

The Procurement and Sales Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, Commodity Operations.

In the field, this subpart will be administered by the Kansas City Commodity Office and the Management Field Office (referred to as KCCO and MFO respectively) and designated Agricultural Stabilization and Conservation State and county committees (referred to as State and county committees).

§ 1435.17 Definitions.

(a) "1977 crop" means domestic sugarbeets and sugarcane, the substantial portion of which is harvested in the areas indicated below during the following periods:

Sugar producing area	*Harvesting period*
	Sugarbeets:
All States, excl. Cal. and Az.	September to November 1977.
California excl. southern area..	July 1977 to June 1978.
Southern California[1].	March to September 1977.
Arizona—lowland area.	April to August 1977.
Arizona—upland area.	September 1977 to January 1978.
	Sugarcane:
Florida	October 1977 to May 1978.
Louisiana	October 1977 to January 1978.
Texas	October 1977 to May 1978.
Hawaii	Calendar year 1977.
Puerto Rico	Calendar year 1977.

[1] Southern California includes the counties of Imperial, San Diego, Riverside, Orange, San Bernardino, and that part of Los Angeles lying south of the San Gabriel Mountains.

(b) "Producer" means the owner of a portion or all of the sugarbeets of sugarcane, including share rent landowners, at the time of harvest and delivery to the processor.

(c) "Eligible producer" means a producer who pays and certifies to his processor that he has paid or will pay, to his agricultural employees engaged in the production of sugar, wage rates in accordance with wage rate regulations to be issued by the Secretary.

(d) "Sugar" means refined beet sugar or raw cane sugar, cane syrup or edible molasses which is not contaminated and does not contain chemicals or other substances poisonous to man or animals.

(e) "Processor" means a person who commercially processes sugarbeets into refined sugar or sugracane into raw sugar, cane syrup or edible molasses.

(f) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing ninety-six degrees by the polariscope.

(g) "Sugarbeets of average quality" means sugarbeets containing 15.44 percent sucrose.

(h) "Sugarcane of average quality" means (1) for Florida, sugarcane containing 14.01 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.69 percent sucrose in normal juice of 78.18 percent purity.

(i) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

[42 FR 58734, Nov. 11, 1977, as amended at 43 FR 21318, May 17, 1978; 43 FR 38687, Aug. 30, 1978]

§ 1435.18 Level and method of support and loan rates.

Prices to domestic producers of 1977 crop sugarbeets and sugarcane will be supported at average levels estimated to be equivalent to 52.5 percent of the parity prices for sugarbeets and sugarcane as of July 1977. The support to domestic producers of 1977 crop sugarbeets and sugarcane will be made available through nonrecourse loans to eligible processors. Loan rates for the 1977 crop shall be 15.57 cents per pound for refined beet sugar, and 13.50 cents per pound for cane sugar, raw value, including the cane sugar, raw value, equivalent contained in cane syrup and edible molasses: *Provided,* That in the case of refined or specialty cane sugars made, by a cane sugar refining facility that is cooperatively owned by its raw cane sugar processors or by a processor of sugarcane who is also a refiner, from sugar which would otherwise be eligible for loan except that such sugar is no longer in its raw form, the loan rate shall be 13.50 cents per pound of the cane sugar, raw value, equivalent of the refined or specialty sugars. The general support prices for sugarbeets and sugarcane are as specified in § 1435.19(b).

[42 FR 58734, Nov. 11, 1977, as amended at 43 FR 21318, May 17, 1978]

§ 1435.19 Eligibility requirements.

(a) Eligible sugar must be processed from that part of the 1977 crop grown by eligible producers. Such sugar must be owned by the eligible processor (or jointly owned by eligible processor and eligible producer) tendering the sugar as collateral for loan, must be in eligible storage, and must not have been reported as marketed under the price support payment program.

(b) Eligible processors for the 1977 crop are those who pay to all eligible producers who deliver to them for processing sugarbeets and sugarcane of average quality, not less than:

(1) For sugarbeets, $22.84 per net ton,

(2) For producers of sugarcane in Florida, $18.37 per net ton,

(3) For producers of sugarcane in Louisiana, $15.90 per net ton,

(4) For producers of sugarcane in Texas, the amount determined by multiplying 8.10 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice surcrose and normal juice purity) extracted from the individual producer's sugarcane,

(5) For producers of sugarcane in Hawaii, where the delivery point is at the mill, the amount determined by multiplying 8.91 cents times the total pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by the individual producer, and

(6) For producers of sugarcane in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426—also known as the Puerto Rico Sugar Law—and the rules issued thereunder by the Sugar Board of Puerto Rico; *Provided, however,* That for any producing area where the specified support price is based on sugarbeets or sugarcane of average quality, that price may be adjusted for sugarbeets or sugarcane of non-average quality on the method agreed upon by the producer and processor, subject to prior approval of the Executive Vice President, CCC, or his designee.

(c) Nothing in paragraph (b) of this section shall be construed as prohibiting normal and traditional customs or practices agreed upon between the producer and processor with respect to the marketing of sugarbeets and sugarcane or the products processed thereform. Any such custom or practice which would cause any reduction in the specified support price must be reported in writing by the processor to, and approved by, the Executive Vice President, CCC.

(d) Eligible storage shall consist of a storage structure or space which is determined by the State committee to be committed to the storage of such quantity of the processor's eligible sugar as is offered for loan or maintained under loan and which is safe for storage of the product.

[42 FR 58734, Nov. 11 1977, as amended at 43 FR 21318, May 17, 1978]

§ 1435.20 Availability, disbursement, and maturity of loan.

(a) *Obtaining price support.* To obtain price support on eligible sugar, an eligible processor must file a request for a loan with the State committee of the State where he is headquartered; and must execute a note, security agreement, and storage agreement as prescribed by CCC. Such request may be filed by a processor within 90 calendar days after he completes processing the 1977 crop.

(b) *Redeemed loan collateral.* A proceessor may not reoffer as security or repledge to CCC as collateral any sugar that has been redeemed from CCC loan.

(c) *Disbursement of loans.* Disbursement will be made by means of sight drafts drawn on CCC.

(d) *Maturity of loans.* Loans will mature on the last day of the eleventh calender month following the month in which the loan was disbursed. Whenever the final date falls on a weekend or federal holiday, the date shall be extended to the next workday.

§ 1435.21 Quantity for loan.

Loans shall not be made on more than the quantity which an eligible processor certifies is eligible, available, properly stored and for which processor's weight and poloraziation records, or such other records satisfactory to CCC, are furnished. Sugar pledged as collateral for a loan is not required to be stored identity preserved; however, a processor's outstanding loan quantity may not exceed his total storage capacity less ineligible sugar in storage.

§ 1435.22 Loan maintenance and liquidation.

(a) (1) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage a quantity of eligible sugar sufficient to cover the loan except that the processor may substitute other sugar of the same or a subsequent crop year which is of at least equal quantity and quality as the sugar which was originally put under loan, if prior permission is obtained from the loan-making office: *Provided,* That the processor may request and obtain prior written approval of the loan-making office on a form prescribed by CCC to remove a specified quantity of the sugar under loan from storage for the purpose of delivering it to a buyer prior to repayment of the loan. The Loan-making office shall not approve a request unless the buyer of the sugar agrees to pay to CCC an amount, not in excess of the purchase price, necessary to satisfy the processor's loan indebtedness on the sugar purchased. Any such approval shall not constitute a release of CCC's security interest in the sugar or release the processor from liability for any amounts due on his loan indebtedness if full payment of such amounts is not received by the loan-making office.

(2) *Relocation of loan sugar intended for forfeiture.* A processor may, with prior approval of the loan-making office, relocate sugar under loan, which is in storage space needed for the storage of 1978 crop sugar, to other eligible storage space not needed for the storage of 1978 crop sugar. In addition to the requirements of § 1435.19(d), the eligibility of such alternate space shall depend upon the ability of CCC to enter into a contract permitting the storage of sugar in the same space subsequent to loan maturity of the sugar to be relocated to such space. To the extent possible, such storage space must be located between the production and marketing areas for the sugar relocated. For that portion of the quantity of loan sugar which the processor declares an intention to forfeit on maturity of the loan

and which is relocated in accordance with the above conditions, CCC shall pay the loading-out, transportation, and loading-in expenses incurred by the processor in the relocation of such sugar: *Provided, however,* That such expenses, plus interest thereon at 6 percent per annum, must be repaid to CCC by the processor for any relocated sugar upon its redemption from loan.

(b) *Loan liquidation.* (1) CCC may at any time accelerate the time for repayment of price support loan indebtedness. In the event of any such acceleration, CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. Upon maturity of the loan, the processor is required to pay off his loan or deliver to CCC a quantity of eligible sugar equivalent to that pledged as collateral for loan, title to which shall, without a sale thereof, immediately vest in CCC. If the processor wishes to deliver the commodity to CCC he must, on or before maturity, give the State committee notice in writing of his intention to do so. Notwithstanding any of the provisions of this section, the State committee may on request of the processor authorize delivery prior to maturity if the processor loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood, damage to the storage structure, or deterioration of the quality of the stored commodity beyond the control of the processor, or for any other reason deemed sufficient by the Deputy Administrator, Commodity Operations.

(2) At his option, a processor may, at any time prior to maturity, redeem all or any part of his loan.

(3) The CCC interest rate for price support loans in effect at the time of the loan disbursement will be the interest rate for such loan until its maturity.

(c) Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for loan is less than the loan quantity, then CCC may call the loan. If CCC feels the seriousness of the matter so justifies it, CCC may call other outstanding loans of the processor and may deny further loans for one year or more.

(e) *Loss or damage.* The processor is responsible for any loss in quantity or quality of sugar under loan, except that CCC will bear its pro rata share of any loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions: (1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (3) the processor gave the State committee immediate notice of such loss or damage; and (4) the processor made no fraudulent representation in the loan documents or in obtaining the loan.

(f) *Settlement of loan.* If the loan rate value of the sugar delivered to CCC, plus loss assumed by CCC according to paragraph (e) of this section , is equal to or greater than the outstanding loan balance, the loan shall be considered as fully satisfied. The loan rate value of the collateral delivered to CCC in excess of that required to satisfy the loan will be paid to the processor.

(g) *Foreclosure.* If the loan indebtedness is not satisfied in accordance with provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on loan the borrower shall pay the difference to CCC.

[42 FR 58734, Nov. 11, 1977, as amended at 43 FR 37420, Aug. 23, 1978; 43 FR 50409, Oct. 30, 1978; 44 FR 9734, Feb. 15, 1979]

§ 1435.23 Processor storage agreement.

(a) The borrower shall: (1) Maintain the loan collateral in eligible storage while it is under loan in accordance with the provisions of § 1435.22(a) and, as deemed necessary by CCC, after maturity of the unredeemed loan, and (2) remove and physically deliver loan collateral in accordance with written instructions issued by CCC.

(b) CCC shall make monthly storage payments to the processor for the time he stores the commodity for CCC after the maturity date of the unredeemed loan. The storage payment rate shall not exceed $.000833 per pounds, per month.

[42 FR 58734, Nov. 11, 1977, as amended at 43 FR 37420, Aug. 23, 1978]

§ 1435.24 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral; however, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest, after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Subterfuge.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, Part 13 of this title, shall be applicable to the program.

(d) *Liens.* Waivers of liens or encumbrances on the sugar tendered as collateral for loans must be obtained which will fully protect the interest of CCC. A lienholder in lieu of waiving his prior lien on sugar tendered as collateral for a loan, may execute a Lienholder's Subordination agreement (Form CCC-864) with CCC in which he subordinates his security interest to the rights of CCC. No liens or encumbrances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer of processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations in Part 780 of this title.

(f) *Records and inspection thereof.* ASCS shall reserve the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data used in furnishing reports required by this subpart. Such books, records, accounts and other written data shall be retained by the processor for not less than 3 years.

(g) *False certifications.* Any false certification, which is made for the purpose of enabling a processor to obtain any loan to which he is not entitled, will subject the person making such certification to liability under applicable Federal, civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon his request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payments is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of the death, incompetency, or disapperance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in Part 707 of this title—Payment Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

[42 FR 58734, Nov. 11, 1977, as amended at 43 FR 21318, May 17, 1978]

§ 1435.25 Applicable forms.

The CCC forms for use in connection with this program will be made available by the State committee.

Subpart—Minimum Wage Rates for Sugarbeet and Sugarcane Fieldworkers

AUTHORITY: Sec. 201 of the Agricultural Act of 1949, as amended, Pub. L. 81-439, 62 Stat. 1051; sec. 902, Pub. L. 95-113, 91 Stat. 949 (7 U.S.C. 1446).

SOURCE: 43 FR 1477, Jan. 10, 1978, unless otherwise noted.

§ 1435.26 General statement.

This subpart contains the regulations which set forth the minimum wage rates for agricultural employees engaged in the production of the 1977 and 1978 crops of sugarbeets and sugarcane established in conjunction with the operation of the price support loan program for sugarbeets and sugarcane which became effective November 8, 1977. The regulations governing the loan program for the 1977 crop are contained in §§ 1435.15 through 1435.25 of this part.

§ 1435.27 Administration.

The Procurement and Sales Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, Commodity Operations. In the field, this subpart will be administered by Agricultural Stabilization and Conservation State and county committees (referred to as "State and county committees").

§ 1435.28 General requirements.

For the purpose of determining eligibility for obtaining price support under programs conducted pursuant to the authority of section 201 of the Agricultural Act of 1949, as amended, the wage rates for all fieldworkers employed in the production, cultivation, or harvesting of sugarbeets or sugarcane, as provided in § 1435.31, shall be not less than the rates set forth in §§ 1435.29 and 1435.30, in connection with work performed on and after November 8, 1977.

§ 1435.29 Wage rates when employed on a time basis.

When employed on a time basis, the wage rates shall be as follows:

Area	Operation or class of worker	Rate per hour	
		1977 crop	1978 crop
All States in which sugarbeets are grown	Hand labor operations of thinning, hoeing, hoe-trimming, weeding, pulling, topping, loading, or gleaning.	$2.85	$3.00
Louisiana sugarcane	Tractor and truck drivers and operators of mechanical equipment.	3.10	3.30
	All other workers	2.85	3.00
Florida and Texas sugarcane	Tractor and truck drivers and operators of mechanical equipment.	3.40	3.60
	All other workers	3.00	3.20
Hawaii and Puerto Rico sugarcane	All classes	[1]	[1]

[1] As required by existing legal obligations resulting from a labor union agreement or from Federal or local legislative or regulatory action.

§ 1435.30 Wage rates when employed on a piecework basis.

(a) *Sugarbeet states.* (1) When employed on a piecework basis for hand labor operations specified in the following table, the wage rates shall not be less than:

	Rate per acre	
	1977 crop	1978 crop
(i) Thinning: Removing excess beets with a hoe only	$20.30	$21.50
(ii) Hoeing: Removing weeds and excess beets with a hoe only	26.45	28.05
(iii) Hoe-trimming: Removing weeds with a hoe and by hand and removing excess beets with a hoe only	31.65	33.55
(iv) Weeding: Removing weeds with a hoe only in fields which have been completely machine-thinned and on which chemical herbicides have been applied	17.20	18.25
(v) Weeding: Removing weeds with a hoe and by hand following either i, ii, iii, iv, v above	17.20	18.25

Provided, That the above rates (A) may be reduced by not more than the indicated percentages for the following wide row spacing: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent, and (B) shall be increased by not less than the indicated percentages for the following narrow row spacing: 19 inches or less but more than 16 inches, 25 percent; 16 inches or less, 35 percent.

(2) *When employed on a piecework basis for hand labor operations not specified or defined in paragraph (a)(1) of this section or for harvesting.* For hand labor operations other than those specified or defined in paragraph (a)(1) of this section involving the removal of beets or weeds and for operations involving pulling, topping, loading, or gleaning which are performed on a piecework basis, the average hourly rate of earnings of each worker for each operation during the time the worker is employed for the operation shall be not less than $2.85 per hour for 1977 crop work or $3 per hour for 1978 crop work.

(b) *All sugarcane areas.* For any operation performed on a piecework basis in sugarcane areas, the average hourly rate of earnings of each worker during each pay period (not to be in excess of 2 weeks) shall be not less than the hourly rate for comparable work performed by each class of worker prescribed for each sugarcane area in § 1435.29.

§ 1435.31 Applicability of wage requirements.

The wage requirements of this subpart are applicable to all fieldworkers employed in operations directly connected with the production, cultivation, or harvesting of 1977 and 1978 crop sugarbeets or sugarcane marketed for processing into refined beet sugar or raw cane sugar, cane syrup, or edible molasses. The wage requirements are not applicable to custom operators; hauling contractors; and workers performing services which are indirectly connected with production, cultivation, or harvesting, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 1435.32 Subterfuge.

Wage rates to any worker shall not be reduced below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

§ 1435.33 Wage records.

The producer shall maintain for a period of three years records which will demonstrate that each worker has been paid wage rates in accordance with the requirements of this subpart. Such wage records shall be available for inspection by ASCS.

Subpart—Price Support Loan Program for 1978 Crop Sugarbeets and Sugarcane

SOURCE: 43 FR 24664, June 7, 1978, unless otherwise noted.

§ 1435.34 General statement.

This subpart contains the regulations which set forth the requirements with respect to price support for the 1978 crip of sugarbeets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by the pledge of eligible sugar in eligible storage.

§ 1435.35 Administration.

(a) The Procurement and Sales Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, Commodity Operations.

(b) In the field, this subpart will be administered by the Kansas City Commodity Office and the Management Field Office (referred to as KCCO and MFO respectively) and designated Agricultural Stabilization and Conservation State and county committees (referred to as State and county committees).

§ 1435.36 Definitions.

(a) "1978 crop" means domestic sugarbeets and sugarcane, the substantial portion of which is harvested in the areas indicated below during the following periods:

Sugar producing area	Harvesting period
	Sugarbeets:
All States, excl. Calif. and Ariz.	September to November 1978.
California, excl. southern area.	July 1978 to June 1979.
Southern California,[1].	March to September 1978.
Arizona—lowland area.	April to August 1978.
Arizona—upland area.	September 1978 to January 1979.
	Sugarcane:
Florida	October 1978 to May 1979.
Louisiana	October 1978 to January 1979.
Texas	October 1978 to May 1979.
Hawaii	Calendar year 1978.
Puerto Rico	Do.

[1] Southern California includes the counties of Imperial, San Diego, Riverside, Orange, San Bernardino, and that part of Los Angeles lying south of the San Gabriel Mountains.

(b) "Producer" means the owner of a portion or all of the sugarbeets or sugarcane, including share rent landowners, at the time of harvest and delivery to the processor.

(c) "Eligible producer" means a producer who pays and certifies to his processor that he has paid or will pay, to his agricultural employees engaged in the production of sugar, wage rates in accordance with wage rate regulations published in the FEDERAL REGISTER of January 10, 1978 (43 FR 1476).

(d) "Sugar" means refined beet sugar or raw cane sugar, cane syrup or edible molasses which is not contaminated and does not contain chemicals or other substances poisonous to man or animals.

(e) "Processor" means a person who commercially processes sugarbeets into refined sugar or sugarcane into raw sugar, cane syrup or edible molasses.

(f) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing ninety-six degrees by the polariscope.

(g) "Sugarbeets of average quality" means sugarbeets containing 15.46 percent sucrose.

(h) "Sugarcane of average quality" means (1) for Florida, sugarcane containing 13.99 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.58 percent sucrose in normal juice of 78.24 percent purity.

(i) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

[43 FR 24664, June 7, 1978, as amended at 43 FR 38687, Aug. 30, 1978]

§ 1435.37 Level and method of support and loan rates.

(a) *Level of support.* Prices to domestic producers of 1978 crop sugarbeets and sugarcane will be supported at average levels estimated to be equivalent to 52.5 percent of the parity prices for sugarbeets and sugarcane as of July 1978. The general support prices for sugarbeets and sugarcane are as specified in § 1435.38(b).

(b) *Method of support.* the support to domestic producers of 1978 crop sugarbeets and sugarcane will be made available through nonrecourse loans to eligible processors.

(c) *Loan rates.* The basic (weighted average) loan rates for the 1978 crop shall be 16.99 cents per pound for refined beet sugar and 14.73 cents per pound for cane sugar, raw value, including the cane sugar, raw value, equivalent contained in cane syrup and edible molasses.

(d) *Locational differentials.* (1) The loan rate applicable to eligible sugar shall be the rate specified in paragraphs (d) (2) and (3) of this section for the region in which such sugar was processed: *Provided,* That in the case of refined or specialty sugar made from raw cane sugar which would otherwise be eligible for loan except that it is no longer in its raw form, the loan rate shall be the appropriate regional loan rate applied to the cane sugar, raw value, equivalent of the refined or specialty sugar. Such sugar must have been manufactured by a cane sugar refining facility that is cooperatively owned by its raw cane sugar processors or by a processor of sugarcane who is also a refiner.

(2) The processing regions and applicable loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1—Michigan and Ohio	17.68
2—Minnesota and the eastern half of North Dakota	16.89
3—Northeastern quarter of Colorado; northwestern quarter of Kansas; Nebraska; and the southeastern quarter of Wyoming	16.48
4—Southeastern quarter of Colorado; and Texas	17.08
5—Montana and the northwestern quarter of Wyoming	16.59
6—That part of Idaho east of the eastern boundary of Owyhee county and of such boundary extended northward; and Utah	16.67
7—That part of Idaho west of the eastern boundary of Owyhee county and of such boundary extended northward; Oregon; and Washington	16.76
8—Arizona and California	17.39

(3) The processing regions and applicable loan rates for cane sugar, raw value, shall be as listed below, except that for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States the applicable loan rate shall be 14.73 cents per pound:

Region	Cents per pound
Florida	14.98
Louisiana	15.04
Texas	14.66
Hawaii	14.66
Puerto Rico	14.06

[43 FR 24664, June 7, 1978, as amended at 43 FR 50411, Oct. 30, 1978; 44 FR 49643, Aug. 24, 1979]

§ 1435.38 Eligibility requirements.

(a) Eligible sugar must be processed from that part of the 1978 crop grown by eligible producers. Such sugar must be owned by the eligible processor (or jointly owned by eligible processor and eligible producer) tendering the sugar as collateral for loan, and must be in eligible storage.

(b) Eligible processors for the 1978 crop are those who pay to all eligible producers who deliver to them for processing sugar beets and sugarcane of average quality in the following locations, not less than:

(1) For sugar beets in the regions described in paragraph (d)(2) of § 1435.37, the following rates per net ton:

Region 1, $23.51.
Region 2, $24.86.
Region 3, $24.26.
Region 4, $25.14.
Region 5, $24.42.
Region 6, $24.54.
Region 7, $24.67.
Region 8, $25.60.

(2) For sugarcane in Florida, $20.36 per net ton;

(3) For sugarcane in Louisiana, $17.57 per net ton;

(4) For sugarcane in Texas, the amount determined by multiplying 8.796 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For sugarcane in Hawaii, where the delivery point is at the mill, the amount determined by multiplying 9.6756 cents times the total pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by the individual producer; and

(6) For sugarcane in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426—also known as the Puerto Rico Sugar Law—and the rules issued thereunder by the Sugar Board of Puerto Rico;

Provided, however, That the foregoing prices may be adjusted for sugar beets or sugarcane of nonaverage quality on the method agreed upon by the producer and processor, subject to prior approval of the Executive Vice President, CCC, or his designee.

(c) Nothing in paragraph (b) of this section shall be construed as prohibiting normal and traditional customs or practices agreed upon between the producer and processor with respect to the marketing of sugarbeets and sugarcane or the products processed therefrom. Any such custom or practice which would cause any reduction in the specified support price must be reported in writing by the processor to, and approved by, the Executive Vice President, CCC.

(d) Eligible storage shall consist of a storage structure or space which is determined by the State committee to be committed to the storage of such quantity of the processor's eligible sugar as is offered for loan or maintained under loan and which is safe for storage of the product.

[43 FR 24664, June 7, 1978, as amended at 43 FR 50412, Oct. 30, 1978]

§ 1435.39 Availability, disbursement, and maturity of loan.

(a) *Obtaining price support.* To obtain price support on eligible sugar, an eligible processor must file a request for a loan with the State committee of the State where he is headquartered; and must execute a note, security agreement, and storage agreement as prescribed by CCC. Such request must be filed by a processor no later than 90 calendar days after he completes processing the 1978 crop.

(b) *Redeemed loan collateral.* A processor may not reoffer as security or repledge to CCC as collateral any sugar that has been redeemed from CCC loan.

(c) *Disbursement of loans.* Disbursement will be made by means of sight drafts drawn on CCC.

(d) *Maturity of loans.* Loans will mature on the last day of the eleventh calendar month following the month in which the loan was disbursed. Whenever the final date falls on a weekend or Federal holiday, the date shall be extended to the next workday.

§ 1435.40 Quantity for loan.

Loans shall not be made on more than the quantity which an eligible processor certifies is eligible, available, properly stored and for which processor's weight and polarization records, or such other records satisfactory to CCC, are furnished. Sugar pledged as collateral for a loan is not required to be stored identity preserved; however, a processor's outstanding loan quantity may not exceed his total storage capacity less ineligible sugar in storage.

§ 1435.41 Loan maintenance and liquidation.

(a) (1) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage a quantity of eligible sugar sufficient to cover the loan except that the processor may substitute other sugar of the same or a subsequent crop year which is of at least equal quantity and quality as the sugar which was originally put under loan if (i) CCC has not reimbursed the processor for relocation of such sugar under the terms of § 1435.41(a)(2) and (ii) prior permission is obtained by the processor from the loan-making office: *Provided,* That the processor may request and obtain prior written approval of the loan-making office on a form prescribed by CCC to remove a specified quantity for the purpose of delivering it to a buyer prior to repayment of the loan. The loan-making office shall not approve a request unless the buyer of the sugar agrees to pay to CCC an amount, not in excess of the purchase price, necessary to satisfy the processor's loan indebtedness on the sugar purchased. Any such approval shall not constitute a release of CCC's security interest in the sugar or release the processor from liability for any amounts due on his loan indebtedness if full payment of such amounts is not received by the loan-making office.

(2) *Relocation of loan sugar intended for forfeiture.* A processor may, not earlier than 60 days before the normal beginning of harvest of the 1979 crop for which the storage space is needed, relocate sugar under loan, which is in storage space needed for the storage of 1979 crop sugar, to other eligible storage, approved by the loan-making office which is not needed for the storage of 1979 crop sugar. In addition to the requirements of § 1435.38(d), the approval of the use of such alternate space shall depend upon the ability of CCC to enter into a contact acceptable to CCC, which permits the storage of sugar so relocated in the same space subsequent to loan maturity. To the extent possible, such storage space must be located between the production and marketing areas for the sugar relocated. For that portion of the quantity of loan sugar which the processor declares an intention to forfeit on maturity of the loan and which is relocated in accordance with the above conditions, CCC shall pay the actual

transportation expenses incurred by such processor in the relocation of such sugar but shall not pay the expenses of loading-out or loading-in: *Provided, however,* That such expenses, plus interest thereon at 7 percent per annum, must be repaid to CCC by the processor for any relocated sugar upon its redemption from loan.

(b) *Loan liquidation.* (1) CCC may at any time accelerate the time for repayment of price support loan indebtedness. In the event of any such acceleration, CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. Upon maturity of the loan, the processor is required to pay off his loan or deliver to CCC a quantity of eligible sugar equivalent to that pledged as collateral for loan, title to which shall, without a sale thereof, immediately vest in CCC. If the processor wishes to deliver the commodity to CCC he must, on or before maturity, give the State committee notice in writing of his intention to do so. Notwithstanding any of the provisions of this section, the State committee may on request of the processor authorize delivery prior to maturity if the processor loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood, damage to the storage structure, or deterioration of the quality of the stored commodity beyond the control of the processor, or for any other reason deemed sufficient by the Deputy Administrator, Commodity Operations.

(2) At his option, a processor may, at any time prior to maturity, redeem all or any part of his loan.

(3) The CCC interest rate for price support loans in effect at the time of the loan disbursement will be the interest rate for such loan until its maturity.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for loan is less than the loan quantity, then CCC may call the loan. If CCC feels the seriousness of the matter so justifies it, CCC may call other outstanding loans of the processor and may deny further loans for one year or more.

(e) *Loss or damage.* The processor is responsible or any loss in quantity or quality of sugar under loan, except that CCC will bear its pro rata share of any loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions:

(1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (3) the processor gave the State committee immediate notice of such loss or damage; and (4) the processor made no fraudulent representation in the loan documents or in obtaining the loan.

(f) *Settlement of loan.* If the loan rate value of the sugar delivered to CCC, plus loss assumed by CCC according to paragraph (e) of this section, is equal to or greater than the outstanding loan balance, the loan shall be considered as fully satisfied. The loan rate value of the collateral delivered to CCC in excess of that required to satisfy the loan will be paid to the processor.

(g) *Foreclosure.* If the loan indebtedness is not satisfied in accordance with provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan the borrower shall pay the difference to CCC.

[43 FR 24665, June 7, 1978, as amended at 43 FR 37420, Aug. 23, 1978; 44 FR 36363, June 22, 1979]

§ 1435.42 Processor storage agreement.

(a) The borrower shall: (1) Maintain the loan collateral in eligible storage while it is under loan in accordance with the provisions of § 1435.41(a) and, as deemed necessary by CCC, after maturity of the unredeemed loan, and (2) remove and physically deliver loan collateral in accordance with written instructions by CCC.

(b) CCC shall make monthly storage payments to the processor for the time he stores the commodity for CCC after the maturity date of the unredeemed loan. The storage payment rate shall not exceed $.000833 per pound, per month.

[43 FR 24664, June 7, 1978, as amended at 43 FR 37420, Aug. 23, 1978; 43 FR 39563, Sept. 6, 1978]

§ 1435.43 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral; however, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest, after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Subterfuge.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, Part 13 of this title, shall be applicable to the program.

(d) *Liens.* Waivers of liens or encumbrances on the sugar tendered as collateral for loans must be obtained which will fully protect the interest of CCC. A lienholder in lieu of waiving his prior lien on sugar tendered as collateral for a loan, may execute a Lienholder's Subordination Agreement (Form CCC-864) with CCC in which he subordinates his security interest to the rights of CCC. No liens or encumberances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations in Part 780 of this title.

(f) *Records and inspection thereof.* ASCS shall reserve the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data used in furnishing reports required by this subpart. Such books, records, accounts and other written data shall be retained by the processor for not less than 3 years.

(g) *False certifications.* Any false certifications, which is made for the purpose of enabling a processor to obtain any loan to which he is not entitled, will subject the person making such certification to liability under applicable Federal, civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon his request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of the death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in Part 707 of this title—Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1435.44 Applicable forms.

The CCC forms for use in connection with this program will be made available by the State committee.

Subpart—Extended 1977 Crop Sugar Loans

SOURCE: 43 FR 55743, Nov. 29, 1978, unless otherwise noted.

§ 1435.45 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the extension of maturity dates for 1977 crop sugar price support loans evidenced by Farm Storage Note and

Security Agreements and by Sugar Loan Addenda thereto.

(b) In order to obtain an extended 1977 crop sugar loan, a processor must file an application requesting an extended loan with the loan making office and have such application approved by that office. The extended loan granted under this subpart will be due on September 30, 1979, or such earlier date as CCC may make demand for payment. A producer may redeem his loan, or deliver the sugar covered by such loan to CCC, on the terms and conditions contained in this subpart.

(c) As used in the regulations in this subpart "CCC" means the Commodity Credit Corporation.

§ 1435.46 Applicability of the regulations governing price support loans for 1977 crop sugar beets and sugarcane.

The following sections of the regulations, as amended, governing the price support loan program for 1977 crop sugarbeets and sugarcane shall also be applicable to extended 1977 crop sugar loans: §§ 1435.16; 1435.17; 1435.19; 1435.22(a), (b), (d), (f), and (g); 1435.23(a); 1435.24; and 1435.25.

§ 1435.47 Eligibility requirements.

(a) *Processor.* A processor shall be eligible to obtain a loan extension if the processor has eligible raw cane sugar or refined beet sugar under a 1977 price support loan.

(b) *Quantity.* The quantity eligible for extension of loan and for storage payment credit shall not exceed the loan balance outstanding upon the original maturity date of the loan.

(c) *Final dates.* The processor must apply for an extension of loan no later than November 30, 1978, for loans maturing on November 30, 1978, and no later than two weeks prior to the original maturity date of the loan for other loans.

(d) *Inspections.* Prior to approval for an extension of loan, the sugar shall be inspected by a representative of the loan-making office. An extension of loan will not be approved unless it is determined that the storage structure is eligible and the quality of the sugar is such that it can reasonably be expected to be stored with safety for the extended storage period.

§ 1435.48 Period of extension.

The maturity date for all loans extended shall be September 30, 1979, or such earlier date as CCC may make demand for payment.

§ 1435.49 Storage payment.

(a) *Storage credit.* Credit will be given for each full day of storage beginning on the day following the original loan maturity date. Storage credit will cease, for the extended loan quantity involved, on (1) the date of loan repayment, (2) the date of approval for removal of loan collateral from storage for delivery to a buyer prior to repayment of the loan, (3) the date of occurrence of any loss or damage to be assumed by CCC, or (4) the date a shortage in loan collateral is determined, whichever is earlier.

(b) *Storage rate.* The payment rate shall be .0008219 cent per pound per day for extended cane loan sugar, raw value, receiving storage credit and .0019178 cent per pound per day for extended refined beet loan sugar receiving storage credit.

(c) *Frequency and method of storage payments.* Storage payments shall be made on a quarterly basis during the extended loan term. Final storage payments will be made at the time loan collateral is redeemed or upon settlement. Disbursement of storage payments will be made by means of sight drafts drawn on CCC and issued by the loan-making office.

§ 1435.50 Commingling.

(a) *When permitted.* The loan-making office may permit:

(1) A processor to commingle quantities of sugar which are under more than one extended loan.

(2) Two or more processors to commingle quantities of sugar under extended loan.

(3) Sugar under extended loan to be commingled with sugar under 1978 crop price support loan and sugar not under price support loan (including forfeited sugar owned by CCC).

(b) *Special conditions.* Notwithstanding any other provision governing extension of loans, if it is determined that the total quantity determined to be in a storage facility is less than the total loan collateral and CCC-owned sugar required to be therein maintained, the shortage shall be proprated to each processor whose loan sugar is in the facility based on the ratio of that portion of his outstanding loan quantity which is represented to be in the facility to the total outstanding loan collateral contained in the storage facility. Any shortage of sugar attributed to a processor shall be considered to be, to the extent possible, from the loan with the earliest disbursement date.

§ 1435.51 Substitution.

Sugar of the same or a subsequent crop year may be substituted for existing extended loan collateral if the required quantity of extended loan collateral is maintained in approved storage space at all times and if prior permission for substitution is obtained from the loan-making office.

§ 1435.52 Loss or damage.

The processor is responsible for any loss in quantity or quality of sugar under loan, except that CCC will bear the loss, or its pro rata share of the loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions:

(a) The loss or damage occurred without fault or negligence on the part of the processor;

(b) The processor gave the State committee immediate notice if the loss or damage resulted solely from an external cause such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God;

(c) If the processor knew or should have known that the sugar was going out of condition or was in danger of going out of condition, the processor notified the loan-making office and confirmed such notice in writing; and

(d) The processor made no fraudulent representation in the loan or loan extension documents or in obtaining or extending the loan.

§ 1435.53 Loss of storage payments.

Notwithstanding any other provisions concerning price support sugar loans, in no case will any storage payment for any quantity of sugar designated for extension of loan be made:

(a) If the processor has made any false representation in the extension of the loan or in its settlement; or

(b) If there has been unauthorized disposition of the commodity with intent to defraud on the part of the processor. If a processor received payment of any amount to which he is entitled, he shall refund such amount plus interest thereon promptly upon demand.

§ 1435.54 Applicable forms.

The forms for use in connection with extended sugar loans will be made available by the State committee.

Subpart—Price Support Loan Program for 1979 Crop Sugarbeets and Sugarcane

SOURCE: 44 FR 45599, Aug. 3, 1979, unless otherwise noted.

§ 1435.55 General statement.

This subpart contains the regulations which set forth the requirements with respect to price support for the 1979 crop of sugarbeets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by the pledge of eligible sugar in eligible storage.

§ 1435.56 Administration.

(a) The Procurement and Sales Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, Commodity Operations.

(b) In the field, this subpart will be administered by the Kansas City Commodity Office and the Management Field Office (referred to as KCCO and MFO respectively) and designated Agricultural Stabilization and Conservation State and county committees (referred to as State and county committees).

§ 1435.57 Definitions.

(a) "1979 crop" means domestic sugarbeets and sugarcane, the substantial portion of which is harvested in the areas indicated below during the following periods:

Sugar Producing Area and Harvesting Period

Sugarbeets:

All States, excluding California and Arizona, September through November 1979.
California, excluding southern area, July 1979 through June 1980.
Southern California,[1] March through September 1979.
Arizona-lowland area, April through August 1979.
Arizona-upland area, September 1979 through January 1980.

Sugarcane:

Florida, October 1979 through May 1980.
Louisiana, October 1979 through January 1980.
Texas, October 1979 through May 1980.
Hawaii, calendar year 1979.
Puerto Rico, calendar year 1979.

(b) "Eligible producers" means the owner of a portion or all of the sugarbeets or sugarcane, including share rent landowners, at the time of harvest and delivery to the processor.

(c) "Sugar" means refined beet sugar or raw cane sugar, cane syrup or edible molasses which is processed from domestically produced sugarbeets and sugarcane, which is not contaminated and does not contain chemicals or other substances poisonous to man or animals.

(d) "Processor" means a person who commercially processes sugarbeets into refined sugar or sugarcane into raw sugar, cane syrup or edible molasses.

(e) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing ninety-six degrees by the polariscope.

(f) "Sugarbeets of average quality" means sugarbeets containing 15.44 percent sucrose.

(g) "Sugarcane of average quality" means (1) for Florida, sugarcane containing 13.97 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.79 percent sucrose in normal juice of 78.69 percent purity.

(h) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

§ 1435.58 Level and method of support and loan rates.

(a) *Level of support.* Prices to domestic producers of 1979 crop sugarbeets and sugarcane will be supported at an average level estimated to be equivalent to 43 percent of the estimated parity prices for sugarbeets and sugarcane as of July 1979. The general support prices for sugarbeets and sugarcane are as specified in § 1435.59(b).

(b) *Method of support.* The support to domestic producers of 1979 crop sugarbeets and sugarcane will be made available through nonrecourse loans to eligible processors.

(c) *Loan rates.* The basic (weighted average) loan rates for the 1979 crop shall be 15.15 cents per pound for refined beet sugar and 13.00 cents per pound for cane sugar, raw value, including the cane sugar, raw value, equivalent contained in cane syrup and edible molasses.

(d) *Location differentials.* (1) The loan rate applicable to eligible sugar shall be the rate specified in paragraphs (d) (2) and (3) of this section for the region in which such sugar was processed: *Provided,* That in the case of refined or specialty sugar made from raw cane sugar which would otherwise be eligible for loan except that it is no longer in its raw form, the loan rate shall be the appropriate regional loan rate applied to the cane sugar, raw value, equivalent of the refined or specialty sugar. Such sugar must have been manufactured by a cane sugar refining facility that is cooperatively owned by its raw cane sugar processors or by a processor of sugarcane who is also a refiner.

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[1] Southern California includes the counties of Imperial, San Diego, Riverside, Orange, San Bernardino, and that part of Los Angeles lying south of the San Gabriel Mountains.

(2) The processing regions and applicable loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1—Michigan and Ohio	15.87
2—Minnesota and the eastern half of North Dakota	15.00
3—Northeastern quarter of Colorado; northwestern quarter of Kansas; Nebraska, and the southeastern quarter of Wyoming	14.76
4—Southeastern quarter of Colorado; and Texas	14.95
5—Montana and the northwestern quarter of Wyoming	14.89
6—That part of Idaho east of the eastern boundary of Owyhee county and of such boundary extended northward; and Utah	14.80
7—That part of Idaho west of the eastern boundary of Owyhee county and of such boundary extended northward; Oregon; and Washington	14.80
8—Arizona and California	15.66

(3) The processing regions and applicable loan rates for cane sugar, raw value, shall be as listed below, except that for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 13.00 cents per pound:

Region	Cents per pound
Florida	13.08
Louisiana	13.30
Texas	12.89
Hawaii	12.89
Puerto Rico	12.30

§ 1435.59 Eligibility requirements.

(a) The quantity of sugar which is eligible to be placed under the 1979 Price Support Loan Program is a quantity which is equivalent to the quantity processed from that part of the 1979 crop grown by eligible producers. Such sugar must be processed and owned by an eligible processor (or jointly owned by an eligible processor and eligible producers) tendering the sugar as collateral for loan, and must be in eligible storage.

(b) Eligible processors for the 1979 crop are those who pay to all eligible producers who deliver to them for processing sugarbeets and sugarcane of average quality in the following locations, not less than:

(1) For sugarbeets in the regions described in paragraph (d)(2) of § 1435.58, the following rates per net ton: Region 1, $21.22: *Provided,* That, if (i) the sugar extracted by a processor from 1979 crop sugarbeets yields, on the average, less than 254.17 pounds per net ton of beets delivered and accepted by the processor or (ii) the processor's net return on by-products per net ton of beets delivered and accepted by the processor averages less than $6.34 per net ton, the required minimum price support rate per net ton of sugarbeets may be adjusted. The adjusted rate will be determined by (A) multiplying $.1502 (the loan rate per pound less $.0085 considered as fixed marketing costs) times the average pounds and hundredths of pounds of sugar extracted per net ton, (B) adding thereto the net return to the processor on by-products per net ton of sugarbeets delivered and accepted, and (C) multiplying the result times 53.1 percent. To the extent that the resulting rate represents other than average quality sugarbeets as defined according to these regulations, such rate may be adjusted accordingly:

Region 2, $22.46.
Region 3, $22.10.
Region 4, $22.39.
Region 5, $22.30.
Region 6, $22.16.
Region 7, $22.16.
Region 8, $23.45.

(2) For sugarcane in Florida, $17.92 per net ton;

(3) For sugarcane in Louisiana, $16.04 per net ton;

(4) For sugarcane in Texas, the amount determined by multiplying 7.734 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane.

(5) For sugarcane in Hawaii, the amount determined by multiplying the total pounds of cane sugar, raw value, recovered per ton from the sug-

arcane delivered to the processor by the individual producer times (i) 8.5074 cents where the delivery point is at the mill, or (ii) 6.5739 cents where the cane is delivered by loading into trucks in the field; and

(6) For sugarcane in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426—also known as the Puerto Rico Sugar Law—and the rules issued thereunder by the Sugar Board of Puerto Rico;

Provided, however, That the foregoing prices may be adjusted for sugarbeets or sugarcane of nonaverage quality on the method agreed upon by the producer and processor.

(c) Eligible storage shall consist of a storage structure or space which is determined by the State committee to be committed to the storage of such quantity of the processor's eligible sugar as is offered for loan or maintained under loan and which is safe for storage of the product.

§ 1435.60 Availability, disbursement, and maturity of loan.

(a) *Obtaining price support.* To obtain price support on eligible sugar, an eligible processor must file a request for a loan with the State committee of the State where he is headquartered; and must execute a note, security agreement, and storage agreement as prescribed by CCC. Such request must be filed no later than 90 calendar days after the processor completes processing the 1979 crop: *Provided,* That loans can be made under this subpart only if disbursed prior to the effective date of any superseding loan program. A loan applied for prior to the effective date of a succeeding loan program may nevertheless be disbursed if any delay is solely due to the time necessary for the loan making office to make disbursement available.

(b) *Redeemed loan collateral.* A processor may not reoffer as security of repledge to CCC as collateral any sugar that has been redeemed from CCC loan.

(c) *Disbursement of loans.* Disbursement will be made by means of sight drafts drawn on CCC.

(d) *Maturity of loans.* Loans will mature on the last day of the ninth calendar month following the month in which the loan was disbursed. Whenever the final date falls on a weekend or Federal holiday, the date shall be extended to the next workday.

§ 1435.61 Quantity for loan.

Loans shall not be made on more than the quantity which an eligible processor certifies is eligible, available, and properly stored, and for which processor's weight and polarization records, or such other records satisfactory to CCC, are furnished. Sugar pledged as collateral for a loan is not required to be stored identity preserved; however, a processor's outstanding loan quantity may not exceed his total eligible storage capacity less ineligible sugar in storage.

§ 1435.62 Loan maintenance and liquidation.

(a) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to cover the loan except that, if prior permission is obtained from the loan-making office, the processor may substitute other sugar of the same or a subsequent crop year which is located at a different storage facility: *Provided,* That such sugar is of at least equal quantity and quality as the sugar which was originally put under loan: *Provided, further,* That the processor may request and obtain prior written approval of the loan-making office on a form prescribed by CCC to remove a specified quantity for the purpose of delivering it to a buyer prior to repayment of the loan. The loan-making office shall not approve a request unless the buyer of the sugar agrees to pay to CCC an amount, not in excess of the purchase price, necessary to satisfy the processor's loan indebtedness on the sugar purchased. Any such approval shall not constitute a release of CCC's security interest in the sugar or release the processor from liability for any amounts due on his loan indebtedness if full payment of such amounts is not received by the loan-making office.

(b) *Loan liquidation.* (1) CCC may at any time accelerate the time for repayment of price support loan indebtedness. In the event of any such acceleration, CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. Upon maturity of the loan, the processor is required to pay off his loan or deliver to CCC a quantity of eligible sugar equivalent to that pledged as collateral for loan, title to which shall, without a sale thereof, immediately vest in CCC. If the processor wishes to deliver the commodity to CCC he must, on or before maturity, give the State committee notice in writing of his intention to do so. Notwithstanding any of the provisions of this section, the State committee may on request of the processor authorize delivery prior to maturity if the processor loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood, damage to the storage structure, or deterioration of the quality of the stored commodity beyond the control of the processor, or for any other reason deemed sufficient by the Deputy Administrator, Commodity Operations.

(2) At his option, a processor may, at any time prior to maturity, redeem all or any part of his loan.

(3) The interest rate until loan maturity for each 1979 crop sugar loan shall be the 1979 crop CCC price support interest rate in effect at the time the loan is disbursed.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for loan is less than the loan quantity, then CCC may call the loan. If CCC feels the seriousness of the matter so justifies it, CCC may call other outstanding loans of the processor and may deny further loans for one year or more.

(e) *Loss or damage.* The processor is responsible for any loss in quantity or quality of sugar under loan, except that CCC will bear its pro rata share of any loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions:

(1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (3) the processor gave the State committee immediate notice of such loss or damage; and (4) the processor made no fraudulent representation in the loan documents or in obtaining the loan.

(f) *Settlement of loan.* If the loan rate value of the sugar delivered to CCC, plus loss assumed by CCC according to paragraph (e) of this section, is equal to or greater than the outstanding loan balance, the loan shall be considered as fully satisfied. The loan rate value of the collateral delivered to CCC in excess of that required to satisfy the loan will be paid to the processor.

(g) *Foreclosure.* If the loan indebtedness is not satisfied in accordance with provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan the borrower shall pay the difference to CCC.

§ 1435.63 Processor storage agreement.

(a) The borrower shall (1) maintain the loan collateral in eligible storage while it is under loan in accordance with the provisions of § 1435.62(a) and, as deemed necessary by CCC, after maturity of the unredeemed loan, and (2) remove and physically deliver loan collateral in accordance with written instructions by CCC.

(b) CCC shall make monthly storage payments to the processor for the time he stores the commodity for CCC after the maturity date of the unredeemed loan. The storage payment rate shall not exceed $.000833 per pound, per month.

§ 1435.64 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral; however, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest, after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Subterfuge.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, Part 13 of this title, shall be applicable to the program.

(d) *Liens.* Waivers of liens or encumbrances on the sugar tendered as collateral for loans must be obtained which will fully protect the interest of CCC. A lienholder, in lieu of waiving his prior lien on sugar tendered as collateral for a loan, may execute a Lienholder's Subordination Agreement (Form CCC-864) with CCC in which he subordinates his security interest to the rights of CCC. No liens or encumbrances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations in Part 780 of this title.

(f) *Records and inspection thereof.* ASCS shall reserve the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by ASCS to determine compliance with the requirements of this subpart. Such books, records, accounts and other written data shall be retained by the processor for not less than 3 years.

(g) *False certifications.* Any false certification, which is made for the purpose of enabling a processor to obtain any loan to which he is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon his request. Deficiencies of $3 or less including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in Part 707 of this title—Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1435.65 Applicable forms.

The CCC forms for use in connection with this program will be made available by the State committee.

Subpart—Extended 1978 Crop Sugar Loans

SOURCE: 44 FR 69612, Dec. 4, 1979, unless otherwise noted.

§ 1435.66 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the extension of maturity dates for 1978 crop sugar price support loans evidenced by Farm Storage Note and Security Agreements and by Sugar Loan Addenda thereto.

(b) In order to obtain an extended 1978 crop sugar loan, a processor must file an application requesting an extended loan with the loan making office and have such application approved by that office. The extended loan granted under this subpart will be due on June 30, 1980, or such earlier date as CCC may make demand for payment. A producer may redeem his loan, or deliver the sugar covered by such loan to CCC, on the terms and conditions contained in this subpart.

(c) As used in the regulations in this subpart "CCC" means the Commodity Credit Corporation.

§ 1435.67 Applicability of the regulations governing price support loans for 1978 crop sugarbeets and sugarcane.

The following sections of the regulations, as amended, governing the price support loan program for 1978 crop sugarbeets and sugarcane shall also be applicable to extended 1978 crop sugar loans: §§ 1435.35; 1435.36; 1435.38; 1435.41 (a), (b), (d), (f), and (g); 1435.42 (a); 1435.43; and 1435.44.

§ 1435.68 Eligibility requirements.

(a) *Processor.* A processor shall be eligible to obtain a loan extension if the processor has eligible raw cane sugar or the processed products thereof or refined beet sugar under a 1978 price support loan.

(b) *Quantity.* The quantity eligible for extension of loan and for storage payment credit shall not exceed the loan balance outstanding upon the original maturity date of the loan.

(c) *Final dates.* The processor must apply for an extension of loan no later than November 30, 1979, for loans maturing on November 30, 1979, and no later than two weeks prior to the original maturity date of the loan for other loans.

(d) *Inspections.* Prior to approval for an extension of loan, the sugar shall be inspected by a representative of the loan-making office. An extension of loan will not be approved unless it is determined that the storage structure is eligible and the quality of the sugar is such that it can reasonably be expected to be stored with safety for the extended storage period.

§ 1435.69 Period of extension.

The maturity date for all loans extended shall be June 30, 1980, or such earlier date as CCC may make demand for payment.

§ 1435.70 Storage payment.

(a) *Storage credit.* Credit will be given for each full day of storage beginning on the day following the original loan maturity date. Storage credit will cease, for the extended loan quantity involved, on (1) the date of loan repayment (2) the date of approval for removal of loan collateral from storage for delivery to a buyer prior to repayment of the loan (3) the date of occurrence of any loss or damage to be assumed by CCC, or (4) the date a shortage in loan collateral is determined, whichever is earlier.

(b) *Storage rate.* The payment rate shall be $.000023 per pound per day for extended loan sugar receiving storage credit.

(c) *Frequency and method of storage payments.* Storage payments shall be made on a quarterly basis during the extended loan term. Final storage payments will be made at the time loan collateral is redeemed or upon settlement. Disbursement of storage payments will be made by means of sight drafts drawn on CCC and issued by the loan-making office.

§ 1435.71 Commingling.

(a) *When permitted.* The loanmaking office may permit:

(1) A processor to commingle quantities of sugar which are under more than one extended loan.

(2) Two or more processors to commingle quantities of sugar under extended loan.

(3) Sugar under extended loan to be commingled with sugar under 1979 crop price support loan and sugar not under price support loan (including forfeited sugar owned by CCC).

(b) *Special conditions.* Notwithstanding any other provision governing extension of loans, if it is determined that the total quantity determined to be in a storage facility is less than the total loan collateral and CCC-owned sugar required to be therein maintained, the shortage shall be pro rated to each processor whose loan sugar is in the facility based on the ratio of that portion of his outstanding loan quantity which is represented to be in the facility to the total outstanding loan collateral contained in the storage facility. Any shortage of sugar attributed to a processor shall be considered to be, to the extent possible, from the loan with the earliest disbursement date.

§ 1435.72 Substitution.

Sugar of the same or a subsequent crop year may be substituted for existing extended loan collateral if the required quantity of extended loan collateral is maintained in approved storage space at all times and if prior permission for substitution is obtained from the loanmaking office.

§ 1435.73 Loss or damage.

The processor is responsible for any loss in quantity or quality of sugar under loan, except that CCC will bear the loss, or its pro rata share of the loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions: (a) The loss or damage occurred without fault or negligence on the part of the processor; (b) The processor gave the State committee immediate notice if the loss or damage resulted solely from an external cause such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (c) If the processor knew or should have known that the sugar was going out of condition or was in danger of going out of condition, the processor notified the loan-making office and confirmed such notice in writing; and (d) The processor made no fraudulent representation in the loan or loan extension documents or in obtaining or extending the loan.

§ 1435.74 Loss of storage payments.

Notwithstanding any other provisions concerning price support sugar loans, in no case will any storage payment for any quantity of sugar designated for extension of loan be made: (a) If the processor has made any false representation in the extension of the loan or in its settlement; or (b) If there has been unauthorized disposition of the commodity with intent to defraud on the part of the processor. If a processor received payment of any amount to which he is not entitled, he shall refund such amount plus interest thereon promptly upon demand.

§ 1435.75 Applicable forms.

The forms for use in connection with extended sugar loans will be made available by the State committee.

Subpart—Price Support Purchase Agreement Program for 1982-Crop Sugar Beets and Sugarcane

SOURCE: 47 FR 23424, May 28, 1982, unless otherwise noted.

§ 1435.76 General statement.

This subpart sets forth the terms and conditions of the price support purchase program for the 1982 crop of sugar beets and sugarcane. The Commodity Credit Corporation (CCC) will offer purchase agreements to processors under which processors may elect to sell sugar to CCC upon maturity of the agreements. Only eligible sugar which is in eligible storage shall be accepted for delivery.

§ 1435.77 Administration.

(a) The Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, State and County Operations.

(b) In the field, this subpart will be administered by the Kansas City Commodity Office and the Management Field Office (referred to as "KCCO" and "MFO" respectively) and designated State and county ASC committees (referred to as "State and county committees").

§ 1435.78 Definitions.

(a) "1982 crop" means sugar processed from domestically produced sugar beets or sugarcane during the period from December 22, 1981, through June 30, 1983.

(b) "Producer" means the owner of a portion or all of the sugar beets or sugarcane, including share rent landowners, both at the time of harvest and delivery to the processor.

(c) "Sugar" means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which is processed by a processor from domestically-produced sugar beets or sugarcane.

(d) "Processor" means a person or legal entity that: (1) Commercially processes sugar beets into refined sugar or sugarcane into raw sugar, cane syrup, or edible molasses; (2) is a cooperatively owned refiner of raw cane sugar which markets refined cane and raw cane sugar on behalf of its members and non-member patrons; or (3) is a processor of sugarcane into raw cane sugar who is also a refiner.

(e) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commerical raw sugar testing 96 degrees by the polariscope.

(f) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(g) "Eligible storage" means a storage facility meeting the requirements set forth in § 1435.83(c).

§ 1435.79 Method of support and purchase agreement rates.

(a) *Method of support.* Price support is available to domestic producers of 1982-crop sugar beets and sugarcane processed beginning December 22, 1981, through March 31, 1982, by means of purchase agreements entered into between processors and CCC.

(b) *Purchase agreement rates.* The basic (weighted average) rates at which CCC will purchase 1982-crop sugar from processors shall be 19.70 cents per pound for refined beet sugar and 16.75 cents per pound for cane sugar, raw value, including the cane sugar, raw value equivalent, contained in refined cane sugar, sugarcane syrup, and edible molasses. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the raw cane sugar equivalent of the refined or specialty sugar.

(c) *Locational differentials.* (1) The purchase agreement rate applicable to sugar shall be the rate specified in paragraphs (c) (2) and (3) of this section for the region in which such sugar was processed.

(2) The processing regions and applicable purchase agreement rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1—Michigan and Ohio	20.54
2—Minnesota and the Eastern half of North Dakota	19.59
3—Northeastern quarter of Colorado; Northwestern quarter of Kansas; Nebraska; and the Southeastern quarter of Wyoming	19.37
4—Southeastern quarter of Colorado; and Texas	19.64
5—Montana and the Northwestern quarter of Wyoming	19.45
6—That part of Idaho east of the Eastern boundary of Owyhee County and of such boundary extended northward; and Utah	19.03
7—That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon and Washington	19.03
8—Arizona and California	20.24

(3) The processing regions and applicable purchase agreement rates for cane sugar, raw value, shall be as listed below, except that for such sugar processed in Hawaii or Puerto Rico but delivered to CCC on the mainland of the U.S., the applicable rate shall be 16.75 cents per pound:

Region	Cents per pound
Florida	16.73
Louisiana	17.16
Texas	16.85
Hawaii	16.66
Puerto Rico	16.23

§ 1435.80 Eligibility requirements.

(a) The maximum quantity of sugar which is eligible to be delivered to CCC by a processor under the 1982 Price Support Purchase Agreement Program is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the period beginning December 22, 1981 through March 31, 1982 from domestically produced sugar beets and sugarcane grown by producers as defined herein. Such sugar must be processed and owned by the processor (or jointly owned by the processor and producer) offering the sugar.

(b) By entering into a purchase agreement with CCC, the processor agrees that proceeds derived from the delivery of sugar to CCC under the purchase agreement program will be accounted for and settled with producers in accordance with the traditional contractual or other arrangements between the processor and the producer for the sharing of proceeds received from the sale of sugar by the processor.

§ 1435.81 Availability, disbursement, and maturity of purchase agreements.

(a) *Obtaining purchase agreements.* To obtain purchase agreements on eligible sugar, a processor: (1) Must file a request for a purchase agreement with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and (2) must execute a purchase agreement as prescribed by CCC. The request for a purchase agreement must be filed no later than June 14, 1982 and must state the quantity of sugar to be covered by the purchase agreement.

(b) *Amendment or withdrawal.* Purchase agreements entered into by a processor may be withdrawn or amended by the processor prior to the final date for filing a purchase agreement as provided in subsection 1435.81(a).

(c) *Maturity of purchase agreements.* Purchase agreements will nature on November 1, 1982.

§ 1435.82 Quantity of sugar covered by a purchase agreement.

A purchase agreement shall not be approved for more than the quantity of sugar which a processor certifies is eligible and available to be placed under a purchase agreement. The total quantity of sugar which a processor may place under a purchase agreement may not exceed the smaller of: (a) The processor's total eligible storage capacity less ineligible sugar in storage; or (b) the quantity of eligible sugar processed from December 22, 1981, through March 31, 1982.

§ 1435.83 Delivery to CCC, quality and storage facility requirements, and settlement.

(a) The quantity of sugar which is eligible to be delivered by a processor to CCC may be less than, but shall not exceed, the smaller of: (1) The quantity of sugar which is shown on a purchase agreement which is approved by CCC; or (2) the minimum quantity of eligible sugar the processor had in eligible storage during the period April 1, 1982, through October 30, 1982, inclusive.

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum requirements:

(1) Refined beet or cane sugar must be: (i) Dry and free flowing; (ii) free of excessive sediment; and (iii) free of any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be: (i) Of reasonable grain size; (ii) free from excessive color or moisture; and (iii) free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(4) All sugar which is delivered to CCC must be free of any contamination by either natural or man-made substances, and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(5) All sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances.

(c) Sugar may only be delivered to CCC in eligible storage. Eligible storage is any storage facility which; (1) Is owned or controlled by the processor; (2) is suitable for the storage and loading out of the sugar being delivered to CCC by the processor; (3) meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR Part 1423); and (4) is placed under a storage contract with CCC. If the sugar is either delivered in an ineligible storage facility or to an ineligible storage facility by the processor, the processor shall be responsible for all costs incurred in moving such sugar to an eligible storage facility.

(d) A processor who intends to sell sugar to CCC shall give a written notice of intent to sell such sugar to CCC not later than October 1, 1982. At that time, the processor shall furnish to CCC complete information as to the storage locations where the processor proposes to deliver the sugar to CCC and, for each location, the quantity of sugar which the processor proposes to deliver to CCC. CCC shall have the right to inspect such sugar and storage facilities. The processor shall also furnish to CCC, at CCC's request and at any time before or after delivery, such production and storage records as CCC considers necessary to verify compliance with the quantitative limitations set forth in §§ 1435.80(a), 1435.82, 1435.83(a). Failure of the processor to produce such records, or the failure of such records to establish the eligibility of the sugar in question, shall render such sugar ineligible for delivery to CCC under the purchase agreement program, regardless of whether such sugar was actually delivered to CCC.

(e) If a processor has given CCC a notice of intent to sell sugar, delivery of the sugar to CCC shall occur in-store in the amounts and at the storage facilities previously designated by the processor in accordance with paragraph (d) of this section. Delivery of such sugar shall occur automatically on November 1, 1982, without further notification or action by either the processor or CCC. At that time, title and all interest in the sugar shall vest in CCC. Notwithstanding the foregoing, delivery shall not occur and title shall not pass if: (1) After the date on which the notice of intent to sell is given to CCC and before November 1, 1982, the processor gives written notice to CCC that it does not intend to sell such sugar (or portion thereof) to CCC; or (2) CCC gives notice to the processor prior to November 1, 1982, that delivery of such sugar (or portion thereof) shall not be accepted by CCC due to the ineligibility of the sugar or the ineligibility of the storage facility.

(f) The processor shall be liable to CCC for any damages suffered by CCC if: (1) The processor delivers ineligible sugar to CCC; or (2) the processor delivers sugar to CCC which is in ineligible storage. The processor shall be liable for such damages regardless of whether CCC inspected the sugar and storage facility prior to delivery, and regardless of whether CCC failed to give notice to the processor of nonacceptance of delivery as provided in paragraph (e) of this section.

(g) Payment for the sugar shall be made by CCC to the processor promptly after delivery of the sugar to CCC.

§ 1435.84 Processor storage agreement.

(a) By executing a purchase agreement and delivering sugar to CCC, the processor agrees to store such sugar on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in these regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the sugar in storage. The processor shall be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the eligibility criteria set forth in § 1435.83(b) of this subpart. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (3) the processor gave the State

ASC committee immediate notice of such loss or damage; and (4) the processor made no fraudulent representation in the purchase agreement or in obtaining approval of the purchase agreement.

(c) After the processor delivers sugar to CCC in eligible storage, the processor shall store such sugar in the eligible storage for such period of time as deemed necessary by CCC after delivery of the sugar to CCC. However, if a sugar beet processor requires the storage space for other sugar during the period of time when the processor is required by CCC to maintain the refined beet sugar delivered under a purchase agreement in the storage facility where delivered, CCC will accept bagged sugar from the current crop in substitution for the delivered bulk sugar if the settlement rate for the area where the bagged sugar is stored is equal to or exceeds the settlement rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the purchased sugar in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the sugar for the account of CCC after delivery of the sugar by the processor in accordance with the purchase agreement. The storage payment rate shall be as agreed upon by CCC and the processor, but in no event shall exceed $.00083 per pound per month.

§ 1435.85 Miscellaneous provisions.

(a) *Scheme or device.* The processor shall not reduce returns to the producer through any scheme or device whatsoever.

(b) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, 7 CFR Part 13, shall be applicable to this program.

(c) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations in 7 CFR Part 780.

(d) *Records and information*—(1) *Maintenance and inspection of records.* ASCS, the Office of the Inspector General, USDA, and the Comptroller General shall have the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years.

(2) *Information on freight costs and related shipping expenses.* Any processor that files a purchase agreement must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By filing the purchase agreement, processors are deemed to have agreed to provide such information when requested by CCC. A processor is required to comply with the request for information by CCC in order to be eligible to deliver sugar to CCC under the provisions of the 1982-crop sugar purchase agreement program.

(e) *False certifications.* Any false certification, which is made for the purpose of enabling a processor to obtain a purchase agreement to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

(f) *Handling payments and collections not exceeding three dollars.* In order to avoid unreasonable administrative costs of making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon the processor's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(g) *Death, incompetency, or disappearance.* In case of the death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a purchase agreement, such payment shall, upon proper application to the State ASC committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payment Due Persons Who Have Died, Disappeared, or Have been Declared Incompetent.

§ 1435.86 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. CCC forms have been developed for program participation by farmers and producers. When such forms are used for participation in the sugar purchase program, the term "producer" shall mean "processor."

Subpart—Price Support Loan Program for 1982-Crop Sugarbeets and Sugarcane

SOURCE: 47 FR 46684, Oct. 20, 1982, unless otherwise noted.

§ 1435.95 General statement.

This subpart sets forth the terms and conditions of the price support loan program for the 1982 crop of sugarbeets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by eligible sugar in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery in settlement of the loan.

§ 1435.96 Administration.

(a) The Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, State and County Operations.

(b) In the field, this subpart will be administered by the Kansas City Field Office (referred to as "KCFO") and designated State and county ASC committees (referred to as "State and county committees").

§ 1435.97 Definitions.

(a) "1982 crop" means sugar processed from domestically-produced sugarbeets or sugarcane during the period from December 22, 1981, through June 30, 1982.

(b) "Eligible producer" means the owner of a portion or all of the sugarbeets or sugarcane, including share rent landowners, both at the time of harvest and delivery to the processor.

(c) "Sugar" means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which: (1) Is processed by a processor from domestically-produced sugarbeets or sugarcane; and (2) meets the quality requirements set forth in § 1435.103(b) of this part.

(d) "Processor" means a person or legal entity that:

(1) Commercially processes sugarbeets into refined sugar or sugarcane into raw sugar, cane syrup, or edible molasses; or

(2) Is a cooperatively-owned refiner of raw cane sugar which markets refined cane sugar and raw cane sugar on behalf of its members and nonmember patrons; or

(3) Is a processor of sugarcane into raw cane sugar that is also a refiner.

(e) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

(f) "Sugarbeets of average quality" means sugarbeets containing 15.61 percent sucrose.

(g) "Sugarcane of average quality" means: (1) For Florida, sugarcane containing 13.98 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 12.89 percent sucrose in normal juice of 79.03 percent purity.

(h) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(i) "Eligible storage" means a storage facility meeting the requirements set forth in § 1435.103(d) of this part.

§ 1435.98 Method of support and loan rates.

(a) *Method of support.* Price support to domestic producers of 1982-crop sugarbeets and sugarcane processed between April 1, 1982, through June 30, 1983, is available through nonrecourse loans to eligible processors.

(b) *Loan rates.* The basic (weighted average) loan rates for the 1982 crop shall be 20.15 cents per pound for refined beet sugar and 17 cents per pound for cane sugar, raw value, including the cane sugar, raw value equivalent, contained in refined cane sugar, sugarcane syrup, and edible molasses. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the raw cane sugar equivalent of the refined or specialty sugar.

(c) *Locational differentials.* (1) The loan rate applicable to eligible sugar shall be the rate specified in paragraphs (c) (2) and (3) of this section for the region in which such sugar was processed.

(2) The processing regions and applicable loan rates for refined beet sugar shall be as listed below:

Region No.	Description	Cents per pound
1	Michigan and Ohio	21.02
2	Minnesota and the Eastern half of North Dakota.	20.04
3	Northeastern quarter of Colorado; Northwestern quarter of Kansas; Nebraska; and the Southeastern quarter of Wyoming.	19.82
4	Southeastern quarter of Colorado; and Texas.	20.10
5	Montana and the Northwestern quarter of Wyoming and Western half of North Dakota.	19.90
6	That part of Idaho east of the Eastern boundary of Owyhee County and of such boundary extended northward; and Utah.	19.47
7	That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon; and Washington.	19.47
8	Arizona and California	20.71

(3) The processing regions and applicable loans rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 17 cents per pound:

Region	Cents per pound
Florida	16.94
Louisiana	17.38
Texas	16.91
Hawaii	16.94
Puerto Rico	16.69

§ 1435.99 Eligibility requirements.

(a) The maximum quantity of sugar which is eligible to be placed under the 1982 price support loan program by an eligible processor is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the period beginning April 1, 1982, through June 30, 1983, from sugarbeets and sugarcane grown by eligible producers. Such sugar must be processed and owned by the eligible processor (or jointly owned by the eligible processor and eligible producer) pledging the sugar as collateral for loan and must be in eligible storage. Storage shall consist of a storage structure which is determined by a representative of the county committee, or State committee if in a location not served by a county committee, to afford safe storage of the sugar. For purposes of this paragraph, sugar that is processed after June 30, 1983, but before October 1, 1983, from sugarbeets harvested during a continuous harvest which began prior to July 1, 1983, shall be considered as having been processed prior to July 1, 1983.

(b) Eligible processors for 1982-crop sugar are those processors who, as a condition of obtaining a CCC price suport loan, agree to pay to all eligible producers who have delivered or will deliver to them for processing sugarbeets and sugarcane of average quality in the following locations not less than:

(1) For sugarbeets harvested between July 1, 1982, and June 30, 1983, in the regions described in paragraph (c)(2) of § 1435.98, the following rates per net ton: Region 1, $28.26: *Provided,* That, if (i) the sugar extracted by a processor from the 1982-crop yields, on the average, less than 232.54 pounds per net ton of sugarbeets delivered and accepted by the processor or

(ii) the processor's net return on byproducts per net ton of sugarbeets delivered and accepted by the processor averages less than $6.53 per net ton, the required minimum price support rate per ton of sugarbeets may be adjusted. The adjusted rate will be determined by (A) multiplying $.2008 (the loan rate per pound less $.0094 considered as fixed marketing costs) by the average pounds and hundredths of pounds of sugar extracted per net ton, (B) adding thereto the net return to the processor on byproducts per net ton of sugarbeets delivered and accepted, and (C) multiplying the result by 53.1 percent.

Region 2, $30.76
Region 3, $30.41
Region 4, $30.85
Region 5, $30.53
Region 6, $29.85
Region 7, $29.85
Region 8, $31.82

For purposes of this paragraph, sugarbeets harvested after June 30, 1982, during a continuous harvest which began prior to July 1, 1982, shall be considered as harvested prior to July 1, 1982: *Provided, however,* That the processor and producer must have previously agreed to settlement for such sugarbeets under a 1981-crop (as traditionally or contractually defined by the processor and producer) sugarbeet purchase contract. Notwithstanding the provisions of §1435.99(a), the amount of sugar processed from such sugarbeets shall not be eligible to be pledged as collateral for a price support loan. Sugarbeets harvested after June 30, 1983, during a continuous harvest which began prior to July 1, 1983, shall be considered as having been harvested prior to July 1, 1983.

(2) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Florida, $22.94 per net ton;

(3) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Louisiana, $20.99 per net ton: *Provided,* however, for sugarcane for which settlement is determined on the basis of a core sample, the minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (CRS adjustment) of sugarcane delivered to the processor by 10.428 cents per pound, plus 58 cents per gross ton of sugarcane for molasses.

(4) For sugarcane harvested between July 1, 1982, and June 30, 1983, in Texas, the amount determined by multiplying 10.146 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For sugarcane harvested in calendar year 1982 in Hawaii, the amount determined in accordance with the standard marketing contract between growers and processors of sugarcane and the cooperatively-owned refiner of raw cane sugar which markets refined and raw cane sugar on behalf of its members and non-member patrons: *Provided, however,* That non-members of such cooperative shall be treated no less favorably than the members of the cooperative under the terms of the standard marketing contract; and

(6) For sugarcane harvested in calendar year 1982 in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426, also known as the Puerto Rico Sugar Law, and the rules issued thereunder by the Sugar Board of Puerto Rico.

The foregoing prices must be adjusted for sugar beets or sugarcane of nonaverage quality under the method agreed upon by the producer and processor.

§ 1435.100 Availability, disbursement, and maturity of loans.

(a) *Availability.* To obtain price support on eligible sugar, an eligible processor: (1) Must file a request for price support with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and (2) must execute a note and security agreement and storage agreement as prescribed by CCC. The request for price support may be filed no earlier than October 1, 1982, and must be filed no later than June 30, 1983. The request for price support may include a quantity of sugar which the processor estimates will be processed after June 30, 1983, but will be considered as having been processed prior to July 1, 1983, in accordance with the provisions of § 1435.99 (a). However, no loan proceeds may be disbursed for such sugar until it has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(b) *Redeemed loan collateral.* A processor may, within the loan availability period, reoffer as security or repledge to CCC as collateral a quantity of eligible sugar that has previously served as loan collateral for a price support loan that has been repaid. In making application for such loan, the processor shall specify that the loan collateral should be treated as a quantity of eligible sugar that has previously served as loan collateral for a price support loan which has been repaid. The processor shall also designate the original price support loan with respect to which the loan collateral is being repledged. The maturity date of the subsequent loan shall be the same as the maturity date of the original loan. The repledging of loan collateral that has previously been redeemed from CCC loan shall not be included in the total cumulative quantity of sugar on which loans have been obtained, in order that the quantity of sugar eligible for loan, which as specified in § 1435.101, shall not be exceeded.

(c) *Disbursement of loans.* Disbursement will be made by means of drafts drawn on the account of CCC.

(d) *Maturity of loans.* Except as provided in paragraph (b) of this section, loans will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30, 1983. Loan maturity dates may be accelerated by CCC in accordance with § 1435.102 (b)(3). Notwithstanding the foregoing, CCC and the processor may agree upon an earlier maturity date if such maturity date will not impair the effectiveness of the support program, as determined by CCC.

§ 1435.101 Quantity for loan.

Loans shall not be approved for more than the quantity of sugar which an eligible processor certifies is eligible and available to be placed under loan. Sugar pledged as collateral for a loan is not required to be stored identity-preserved. The total cumulative quantity of sugar that may be pledged as collateral for a price support loan may not exceed the quantity of eligible sugar processed from April 1, 1982, through June 30, 1983. The total quantity of sugar which a processor may pledge as collateral for a loan at any single time may not exceed: (1) The total eligible storage capacity less ineligible sugar in storage; or (2) the quantity of eligible sugar processed from April 1, 1982, through June 30, 1983.

§ 1435.102 Loan maintenance and liquidation.

(a) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to cover the loan. By executing a Marketing Authorization for Loan Collateral (Form CCC-681-1), the processor may request and obtain prior written approval of the loanmaking office to remove a specified quantity of the loan collateral for the purpose of delivering it to a buyer prior to repayment of the loan. The loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay to CCC an amount, not in excess of the purchase price, necessary to satisfy the processor's loan indebtedness on the sugar purchased. Any such approval shall not: (1) Constitute a release of CCC's security interest in the sugar; or (2) relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(b) *Loan liquidation*—(1) *Redemption of loan collateral.* At the processor's option, a processor may, at any time prior to maturity of the loan, redeem all or any part of the loan collateral by paying to CCC the principal amount of the loan plus interest applicable to the quantity of sugar redeemed.

(2) *Forfeiture of loan collateral.* (i) If a processor desires to forfeit all or any part of the loan collateral to CCC, the processor must notify in writing the appropriate loan-making office of the processor's intent to forfeit the loan collateral and the amount of loan collateral which the processor intends to forfeit. Such notice must be delivered to the loan-making office no later than 30 days prior to the maturity date of the loan. CCC shall not accept delivery of sugar in settlement of a price support loan in excess of the amount specified in the notice of intent to forfeit.

(ii) Notwithstanding the fact that the processor has give notice of intent to forfeit, the processor may, at any time prior to maturity of the loan, redeem the loan collateral in accordance with paragraph (b)(1) of this section.

(iii) If the processor does not redeem any amount of the loan collateral with respect to which a notice of intent to forfeit has been properly given by the processor, the unredeemed loan collateral will, without further action by CCC or the processor, be deemed to have been delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Upon delivery, title and all rights and interests with respect to the sugar shall immediately vest in CCC. Delivery of eligible sugar in eligible storage will be accepted as payment in full of the principal amount of the loan, plus interest, applicable to the quantity of sugar delivered.

(3) *Acceleration of the loan maturity date.* CCC may at any time accelerate the date for repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. In the event of any such acceleration, the processor may elect to redeem or forfeit all or any part of the loan collateral in accordance with the provisions of paragraphs (b)(1) and (b)(2) of this section. However, the required notice of intent to forfeit, as set forth in paragraph (b)(2)(i), may be given at any time prior to the accelerated maturity date.

(4) *Foreclosure.* If the loan indebtedness, including interest, is not satisfied in accordance with the provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan, the processor shall be liable to CCC for the difference.

(5) *Loss or damage of loan collateral.* The processor shall at all times be responsible for maintaining the quality and quantity of the loan collateral in storage. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss in the case of loan collateral sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (i) the loss or damage occurred without fault or negligence on the part of the processor; (ii) the loss resulted solely from an external cause (other then insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (iii) the processor gave the loanmaking office immediate notice of such loss or damage; and (iv) the processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a price support loan is less than the loan quantity, CCC may call the loan.

§ 1435.103 Delivery to CCC, quality, and storage facility requirements.

(a) The quantity of sugar which a processor may deliver to CCC in settlement of the loan shall not exceed the quantity of sugar which is shown on the note and security agreement approved by CCC, minus any quantity that was redeemed or released for removal in accordance with a Marketing Authorization for Loan Collateral (Form CCC-681-1).

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum quality requirements:

(1) Refined beet or cane sugar must be: (i) Dry and free flowing; (ii) free of excessive sediment; and (iii) free of any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be: (i) Of reasonable grain size; (ii) free from excessive color or moisture; and (iii) free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or would impair or prevent the use of such sugar for normal commercial purposes.

(4) Any type of sugar delivered to CCC must be free of any contamination by either natural or manmade substances which are poisonous or harmful to humans or animals.

(c) All sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances.

(d) Sugar may only be delivered to CCC in eligible storage. Eligible storage is any storage facility which: (1) Is owned or controlled by the processor; (2) is suitable for the storage and loading out of the sugar being delivered to CCC by the processor; (3) meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR 1423); and (4) is placed under a storage contract with CCC. If the sugar is delivered in or to an ineligible storage facility, the processor shall be responsible for all costs incurred in moving the sugar to an eligible storage facility.

(e) CCC shall, at any time, have the right to inspect the loan collateral and the storage facilities in which it is situated. The processor shall also furnish to CCC such production records as CCC considers necessary to verify compliance with the quantitative limitations set forth in § 1435.99(a) and § 1435.101.

(f) The processor shall be liable to CCC for any damages suffered by CCC if: (1) The processor delivers ineligible sugar to CCC; or (2) the processor delivers sugar to CCC which is stored in ineligible storage. The processor shall be liable for such damages regardless of whether CCC inspected the sugar and storage facility prior to delivery.

§ 1435.104 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store on behalf of CCC any loan collateral sugar that is forfeited to CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in the regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the CCC-owned sugar in storage. The processor shall be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the quality criteria set forth in § 1435.103(b) of this subpart.

Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss in the case of CCC-owned sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (3) the processor gave the loanmaking office immediate notice of such loss or damage; and (4) the processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan, or in the storage agreement.

(c) After delivery of the sugar to CCC, the processor shall store sugar delivered to CCC in the eligible storage where delivered for such period of time as is deemed necessary by CCC. However, if a sugarbeet processor requires the storage space for other sugar during the period the processor is required by CCC to maintain the refined beet sugar delivered to CCC in settlement of the loan in the storage where delivered, CCC will accept bagged sugar from the current crop in substitution for the delivered bulk sugar if the sugar loan rate for the area where the bagged sugar is stored is equal to or exceeds the loan rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the forfeited loan collateral in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar for CCC. The storage payment rate shall be as agreed upon by CCC and the processor but in no event shall exceed $.00083 per pound per month.

§ 1435.105 Interest charges.

(a) Each sugar loan shall bear interest at the rate applicable to such Note and Security Agreement and such subsequent increased or decreased interest rates as determined and announced by the Secretary.

(b) Late payment charges, if applicable, shall be charged in accordance with 7 CFR Part 1403.

§ 1435.106 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral. However, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Scheme or device.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any scheme or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and witholding, 7 CFR Part 13, shall be applicable to the program.

(d) *Liens.* Waivers of liens or encumbrances on the sugar pledged as loan security to CCC must be obtained to protect fully the interest of CCC. A lienholder, in lieu of waiving a prior lien on sugar, may execute with CCC a Lienholder's Subordination Agreement (Form CCC-864) in which the lienholder's security interest is subordinated to the rights of CCC. No liens or encumbrances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR Part 780.

(f) *Records and information*—(1) *Maintenance and inspection of records.* ASCS, the Office of the Inspector General, USDA, and the Comptroller General of the United States, shall have the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years.

(2) *Information on freight costs and related shipping expenses.* Any processor that obtains price support on eligible sugar must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By obtaining price support, processors are deemed to

have agreed to provide such information when requested by CCC.

(g) *False certification.* Any false certification, which is made for the purpose of enabling a processor to obtain a price support loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid unreasonable administrative costs incurred in making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon the processor's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of the death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payment Due Perons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1435.107 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. CCC forms have been developed for program participation by farmers and producers. When such forms are used for participation in the sugar loan program, the term "producer" shall mean "processor."

Subpart—Price Support Loan Program for the 1983 Through 1985 Crops of Sugar Beets and Sugarcane

Source: 48 FR 45377, Oct. 5, 1983 and 49 FR 38532, Oct. 1, 1984, unless otherwise noted.

§ 1435.110 General statement.

This subpart sets forth the terms and conditions of the price support loan program for the 1983 through 1985 crops of sugar beets and sugarcane. The Commodity Credit Corporation (CCC) will offer to eligible processors nonrecourse loans which must be evidenced by notes and security agreements and secured by the pledge of eligible sugar in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery in settlement of the loan.

§ 1435.111 Administration.

(a) The Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, State and County Operations.

(b) In the field, this subpart will be administered by the Kansas City Commodity Office and the Kansas City Management Office (referred to as "KCCO" and "KCMO", respectively), and designated State and county ASC committees (referred to as "State and county committees").

§ 1435.112 Definitions.

(a) "Eligible producer" means the owner of a portion or all of the sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor.

(b) "Eligible storage" means a storage facility meeting the requirements set forth in § 1435.118(d) of this subpart.

(c) "Normal juice" means the undiluted juice extractable from sugarcane by a mill tandem when no maceration water is added during the milling process.

(d) "Normal juice purity" means a percentage expressing the ratio of the quantity of sucrose to the quantity of dissolved solids in normal juice.

(e) "Normal juice sucrose" means the percentage of sucrose in normal juice.

(f) "Processor" means a person or legal entity that: (1) Commercially processes sugar beets into refined sugar or processes sugarcane into raw sugar, cane syrup, or edible molasses; (2) is a cooperatively-owned refiner of raw cane sugar which markets refined cane sugar and raw cane sugar on behalf of its members and nonmember patrons; or (3) is both a processor of sugarcane into raw cane sugar and a refiner.

(g) "Raw value" of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

(h) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(i) "Sugar" means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which: (1) Is processed by a processor from domestically-produced sugar beets or sugarcane, and (2) meets the quality requirements set forth in § 1435.118(b) of this subpart.

(j) "Sugar beets of average quality" means sugar beets containing 15.59 percent sucrose.

(k) "Sugarcane of average quality" means: (1) For Florida, sugarcane containing 13.91 percent sucrose in normal juice; and (2) for Louisiana, sugarcane containing 13.20 percent sucrose in normal juice of 79.70 percent purity.

(l) "1983 crop year" means the period from July 1, 1983 through June 30, 1984, inclusive. Similarly, "1984 crop year" and "1985 crop year" means the periods July 1, 1984 through June 30, 1985, inclusive, and July 1, 1985 through June 30, 1986, inclusive, respectively.

(m) "1983 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the 1983 crop year. "1984 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the 1984 crop year. "1985 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the 1985 crop year.

§ 1435.113 Method of support and loan rates.

(a) *Method of support.* Price support to domestic producers of the 1983 through 1985 crops of sugar beets and sugarcane processed during the applicable crop year is available through nonrecourse loans to eligible processors.

(b) *Loan rates.* The basic (weighted average) loan rates for the 1983 crop shall be 20.86 cents per pound for refined beet sugar and 17.5 cents per pound for cane sugar, raw value, including the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. The loan rates for the 1984 and 1985 crops of sugar beets and sugarcane will be set forth in subsequent notices published in the FEDERAL REGISTER on or before October 1 of the applicable crop year. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

(c) *Location differentials.* (1) The 1983 crop loan rate applicable to eligible sugar shall be the rate specified in paragraphs (c) (2) and (3) of this section for the region in which such sugar was processed. The 1984 and 1985 crop rates applicable to eligible sugar specified in paragraphs (c) (2) and (3) of this section for the region in which such sugar was processed will be set forth in subsequent notices published in the FEDERAL REGISTER on or before October 1 of the applicable crop year.

(2) The processing regions and applicable 1983 crop loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1—Michigan and Ohio	22.29
2—Minnesota and the eastern half of North Dakota	20.97
3—Northeastern quarter of Colorado; northwestern quarter of Kansas; Nebraska; and the southeastern quarter of Wyoming	20.16
4—Texas	21.13
5—Montana and the northwestern quarter of Wyoming and western half of North Dakota	20.31
6—That part of Idaho east of the eastern boundary of Owyhee County and of such boundary extended northward	20.20
7—That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon	20.20
8—California	21.35

(3) The processing regions and applicable 1983 crop loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar proc-

essed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 17.5 cents per pound:

Region	Cents Per pound
Florida	17.47
Louisiana	17.82
Texas	17.45
Hawaii	17.38
Puerto Rico	17.06

§ 1435.114 Eligibility requirements.

(a) The maximum quantity of sugar which is eligible to be pledged as collateral for price support loans by an eligible processor is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the applicable crop year from sugar beets and sugarcane grown by eligible producers. Such sugar must be processed and owned by the eligible processor (or jointly owned by the eligible processor and eligible producer) pledging the sugar as collateral for loan and must be in eligible storage. For purposes of this paragraph and § 1435.116 of this subpart, sugar that is processed after June 30 of a particular crop year, but before October 1 of the subsequent crop year, from sugar beets harvested during a continuous harvest which began during that particular crop year, shall be considered as having been processed during that particular crop year.

(b) Eligible processors are those processors who, as a condition of obtaining a CCC price support loan, agree to pay to all eligible producers who have delivered or will deliver to them for processing sugar beets and sugarcane of average quality in the following locations not less than:

(1) For sugar beets harvested between July 1, 1983, and June 30, 1984, in the regions described in paragraph (c)(2) of § 1435.113 of this subpart, the following rates per net ton: Region 1, $28.98: *Provided,* That if (i) the sugar extracted by a processor from the 1983 crop yields, on the average, less than 222.10 pounds per net ton of sugar beets delivered and accepted by the processor or (ii) the processor's net return on byproducts per net ton of sugar beets delivered and accepted by the processor averages less than $7.46 per net ton, the required minimum price support rate per ton of sugar beets may be adjusted. The adjusted rate will be determined by (A) multiplying $.2121 (the loan rate per pound less $.0108 considered as fixed marketing costs) by the average pounds and hundredths of pounds of sugar extracted per net ton, (B) adding thereto the net return to the processor on byproducts per net ton of sugar beets delivered and accepted, and (C) multiplying the result by 53.1 percent. Region 2, $31.97; Region 3, $30.69; Region 4, $32.23; Region 5, $30.93; Region 6, $30.76; Region 7, $30.76; and Region 8, $32.58;

(2) For sugarcane harvested between July 1, 1983 and June 30, 1984, in Florida, $23.48 per net ton;

(3) For sugarcane harvested between July 1, 1983, and June 30, 1984, in Louisiana, $21.92 per net ton: *Provided,* That for sugarcane for which settlement is determined on the basis of a core sample, the minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (commercial recoverable sugar adjustment) of sugarcane delivered to the processor by 10.692 cents per pound, plus 50 cents per gross ton of sugarcane for molasses;

(4) For sugarcane harvested between July 1, 1983, and June 30, 1984, in Texas, the amount determined by multiplying 10.470 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For sugarcane harvested in Hawaii, the amount determined in accordance with the standard marketing contract for the calendar year in which the sugarcane was harvested between growers and processors of sugarcane and the cooperatively-owned refiner of raw cane sugar which markets

refined and raw cane sugar on behalf of its members and non-member patrons: *Provided*, That non-members of such cooperative shall be treated no less favorably than the members of the cooperative under the terms of the standard marketing contract; and

(6) For sugarcane harvested in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426, also known as the Puerto Rico Sugar Law, and the rules issued thereunder by the Sugar Board of Puerto Rico for the calendar year in which the sugarcane was harvested.

(c) The foregoing prices may be adjusted for sugar beets or sugarcane of non-average quality under a method agreed upon by the producer and processor in accordance with the terms and conditions of the marketing contract.

(d) The minimum price support levels specified in paragraphs (b) (1) through (6) of this section for the 1984 and 1985 crops will be set forth in subsequent notices published in the FEDERAL REGISTER on or before October 1 of the applicable crop year.

§ 1435.115 Availability, disbursement, and maturity of loans.

(a) *Availability*. To obtain price support on eligible sugar, an eligible processor: (1) Must file a request for price support with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and (2) must execute a note and security agreement and storage agreement as prescribed by CCC. The request for price support may be filed no earlier than October 1 and must be filed no later than June 30 of the applicable crop year. The request for price support may include a quantity of sugar which the processor estimates will be processed after that crop year but will be considered as having been processed during that crop year in accordance with the provisions of § 1435.114(a) of this subpart. However, no loan proceeds may be disbursed for such sugar until it has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(b) *Redeemed loan collateral*. A processor may, within the loan availability period, repledge to CCC as collateral eligible sugar that has previously served as loan collateral for a price support loan that has been repaid. In making application for such loan, the processor shall specify that the loan collateral should be treated as a quantity of eligible sugar that has previously served as loan collateral for a price support loan which has been repaid. The processor shall also designate the original price support loan with respect to which the reoffered loan collateral was originally pledged. The maturity date of the subsequent loan shall be the same as the maturity date of the original loan. The repledging of loan collateral that has previously been redeemed from CCC shall not be included in determining the total cumulative quantity of sugar on which loans have been obtained for purposes of § 1435.116 of this subpart.

(c) *Disbursement of loans*. Disbursement will be made by means of drafts drawn on the account of CCC.

(d) *Maturity of loans*. Except as provided in paragraph (b) of this section, a loan will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan. Loan maturity dates may be accelerated by CCC in accordance with § 1435.117(b)(3) of this subpart. Notwithstanding the foregoing, CCC and the processor may agree upon an earlier maturity date or a later maturity date (but in no event later than September 30 following disbursement of the loan) if such maturity date will not impair the effectiveness of the support program, as determined by CCC.

[48 FR 45377, Oct. 5, 1983 and 49 FR 38532, Oct. 1, 1984, as amended by Amdt. 1, 50 FR 27414, July 3, 1985; 50 FR 37172, Sept. 12, 1985]

§ 1435.116 Quantity eligible for loan.

Price support loans shall not be approved for more than the quantity of sugar which an eligible processor certifies is eligible and available to be pledged as collateral for a loan. Sugar pledged as collateral for a loan is not required to be stored identity-reserved. The total cumulative quantity of sugar that may be pledged as collateral for a price support loan may not exceed the maximum quantity of sugar eligible to be pledged as loan collateral as determined under § 1435.114(a) of this subpart. The total quantity of sugar which a processor may pledge as collateral for a loan at any single time may not exceed: (a) The total eligible storage capacity less ineligible sugar in storage; or (b) the quantity of eligible sugar processed during the applicable crop year, whichever is less.

§ 1435.117 Loan maintenance and liquidation.

(a) *Maintenance of the commodity under loan.* A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to cover the loan. By executing a Marketing Authorization for Loan Collateral (Form CCC-681-1), the processor may request and obtain prior written approval of the loanmaking office to remove a specified quantity of the loan collateral for the purpose of delivering it to a buyer prior to repayment of the loan. The loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay to CCC an amount necessary to satisfy the processor's loan indebtedness with respect to the sugar which has been purchased. Any such approval shall not: (1) Constitute a release of CCC's security interest in the sugar; or (2) relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(b) *Loan liquidation*—(1) *Redemption of loan collateral.* At the processor's option, a processor may, at any time prior to maturity of the loan, redeem all or any part of the loan collateral by paying to CCC the principal amount of the loan, plus interest, applicable to the quantity of sugar redeemed.

(2) *Forfeiture of loan collateral.* (i) If a processor desires to forfeit all or any part of the loan collateral to CCC, the processor must notify in writing the appropriate loan-making office of the processor's intent to forfeit the loan collateral and the amount of loan collateral which the processor intends to forfeit. Such notice must be delivered to the loan-making office no later than 30 days prior to the maturity date of the loan. CCC shall not accept delivery of sugar in settlement of a price support loan in excess of the amount specified in the notice of intent to forfeit.

(ii) Notwithstanding the fact that the processor has given notice of intent to forfeit, the processor may, at any time prior to maturity of the loan, redeem the loan collateral in accordance with paragraph (b) (1) of this section.

(iii) If the processor does not redeem any amount of the loan collateral with respect to which a notice of intent to forfeit has been properly given, the unredeemed loan collateral will, without further action by CCC or the processor, be deemed to have been delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Upon delivery, title and all rights and interests with respect to the sugar shall immediately vest in CCC. Delivery of eligible sugar in eligible storage will be accepted as payment in full the principal amount of the loan, plus interest, applicable to the quantity of sugar delivered.

(3) *Acceleration of the loan maturity date.* CCC may at any time accelerate the date for repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 10 days in advance of the accelerated loan maturity date. In the event of any such acceleration, the processor may elect to redeem or forfeit all or any part of the loan collateral in accordance with the provisions of paragraphs (b) (1) and (2) of this section. However, the required notice of intent to forfeit, as set forth in (b)(2)(i) of this section, may be given at any time prior to the accelerated maturity date.

(4) *Foreclosure.* If the loan indebtedness, including interest, is not satisfied in accordance with the provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell it at either a public or private sale. CCC may become the purchaser. If the net pro-

ceeds are less than the amount due on the loan, the processor shall be liable to CCC for the difference.

(5) *Loss or damage of loan collateral.* The processor shall at all times be responsible for maintaining the quality and quantity of the loan collateral in storage. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss, in the case of loan collateral sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (i) The loss or damage occurred without fault or negligence on the part of the processor; (ii) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (iii) the processor gave the loanmaking office immediate notice of such loss or damage; and (iv) the processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) *Storage costs.* Storage costs through the loan maturity date shall be borne by the borrower.

(d) *Processor incorrect certification or unauthorized removal.* If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for price support loan is less than the loan quantity, because of incorrect certification or unauthorized removal, CCC may call the loan.

§ 1435.118 Delivery to CCC, quality, and storage facility requirements.

(a) The quantity of sugar which a processor may deliver to CCC in settlement of the loan shall not exceed the quantity of sugar which is shown on the note and security agreement approved by CCC, minus any: (1) quantity that was redeemed or released for removal in accordance with a Marketing Authorization for Loan Collateral (Form CCC-681-1), and (2) loss assumed by CCC in accordance with § 1435.117(b)(5) of this subpart.

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum quality requirements:

(1) Refined beet or cane sugar must be: (i) Dry and free flowing; (ii) free of excessive sediment; and (iii) free of any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be: (i) Of reasonable grain size; (ii) free from excessive color or moisture; and (iii) free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(4) Any type of sugar delivered to CCC must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) All sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances.

(d) Sugar may only be delivered to CCC in eligible storage. Eligible storage is any storage facility which: (1) Is owned or controlled by the processor; (2) is suitable for the storage and loading out of the sugar being delivered to CCC by the processor; (3) meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR 1423); and (4) is placed under a storage contract with CCC; and (5) consists of a storage structure which is determined by a representative of the county committee, or State committee if in a location not served by a county committee, to afford safe storage of the sugar. If the sugar is delivered in or to an ineligible storage facility, the processor shall be responsible for all costs incurred in moving the sugar to an eligible storage facility.

(e) CCC shall, at any time, have the right to inspect the loan collateral and the storage facilities in which it is situated. The processor shall also furnish to CCC such production records as CCC considers necessary to verify compliance with the quantitative limitations set forth in §§ 1435.114(a) and 1435.116 of this subpart.

(f) The processor shall be liable to CCC for any damages suffered by CCC if: (1) The processor delivers ineligible sugar to CCC; or (2) the processor delivers sugar to CCC which is stored in ineligible storage. The processor shall be liable for such damages regardless of whether CCC inspected the sugar and storage facility prior to delivery.

§ 1435.119 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any loan collateral sugar that is forfeited to CCC on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in the regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the CCC-owned sugar in storage. The processor shall be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the eligibility criteria set forth in § 1435.118(b) of this subpart. Notwithstanding the foregoing, the processor shall not be liable for any damage, and CCC will bear its pro rata share of any loss, in the case of CCC-owned sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC that each of the following conditions occurred: (1) The loss or damage occurred without fault or negligence on the part of the processor; (2) the loss resulted solely from an external cause (other than insect infestation, vermin, or animals) such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other acts of God; (3) the processor gave the loanmaking office immediate notice of such loss or damage; and (4) the processor made no fraudulent or misleading representation in the loan documents or in obtaining the loan.

(c) After delivery of the sugar to CCC, the processor shall store sugar delivered to CCC in the eligible storage where delivered for as long as deemed necessary by CCC after delivery of the sugar to CCC. However, if a sugar beet processor requires the storage space for other sugar during the period the processor is required by CCC to maintain the refined beet sugar delivered to CCC in settlement of the loan in the storage where delivered, CCC will accept bagged sugar from the then current crop in substitution for the delivered bulk sugar if the sugar loan rate for the area where the bagged sugar is stored is equal to or exceeds the loan rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the forfeited loan collateral in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar for CCC. The 1983 crop storage payment rate shall be as agreed upon by CCC and the processor but shall in no event exceed $.00083 per pound per month. The 1984 and 1985 crop storage payment rates will be set forth in subsequent notices published in the FEDERAL REGISTER on or before October 1 of the applicable year.

§ 1435.120 Interest charges.

(a) Each sugar loan shall bear interest at the rate applicable to such Note and Security Agreement and such subsequent increased or decreased interest rates as determined and announced by the Secretary.

(b) Late payment charges, if applicable, shall be charged in accordance with 7 CFR Part 1403.

§ 1435.121 Miscellaneous provisions.

(a) *Insurance.* CCC will not require the processor to insure the sugar pledged as collateral. However, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the processor's equity in the sugar involved in the loss.

(b) *Scheme or device.* The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any scheme or device whatsoever.

(c) *Processor indebtedness.* The regulations issued by the Secretary governing setoffs and witholding, 7 CFR Part 13, shall be applicable to the program in this subpart.

(d) *Liens.* Waivers of liens or encumbrances on the sugar pledged as loan security to CCC must be obtained to protect fully the interest of CCC. A lienholder, in lieu of waiving a prior lien on sugar, may execute with CCC a Lienholder's Subordination Agreement (Form CCC-864) in which the lienholder's security interest is subordinated to the rights of CCC. No liens or encumbrances shall be placed on the sugar pledged as collateral after the loan is approved.

(e) *Appeals.* A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR Part 780.

(f) *Records and information*—(1) *Maintenance and inspection of records.* ASCS, the Office of the Inspector General, USDA, and the Comptroller General of the United States, shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the loan disbursement date.

(2) *Information on freight costs and related shipping expenses.* Any processor obtaining price support on eligible sugar must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By obtaining price support, processors are deemed to have agreed to provide such information when requested by CCC.

(g) *False certification.* Any false certification, which is made for the purpose of enabling a processor to obtain a price support loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

(h) *Handling payments and collections not exceeding three dollars.* In order to avoid unreasonable administrative costs incurred in making small payments and handling small accounts, amounts of $3 or less which are due the processor will be paid only upon the processor's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1435.122 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. CCC forms have been developed for program participation by farmers and producers. When such forms are used for participation in the sugar loan program, the term "producer" shall mean "processor."

§ 1435.123 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and OMB number 0560-0093 has been assigned.

PART 1438—NAVAL STORES

Subpart—1980 Gum Naval Stores Loan Program

Sec.

1438.1636 General statement and administration.
1438.1637 Definitions.
1438.1638 Loan to ATFA.
1438.1639 Advances to producers.
1438.1640 Rate of advance to producers.
1438.1641 Maturity of loan.
1438.1642 Redemption by ATFA.
1438.1643 Net gains.
1438.1644 Right of CCC upon maturity.
1438.1645 Personal liability.

Subpart—1980 Gum Naval Stores Loan Program

AUTHORITY: Sec. 4(d), 62 Stat. 1070 (15 U.S.C. 714b); sec. 5(a), 62 Stat. 1072 (15 U.S.C. 714c), and secs. 301, 401, 63 Stat. 1053, 1054 (7 U.S.C. 1421, 1447).

Source: 45 FR 39493, June 11, 1980, unless otherwise noted.

§ 1438.1636 General statement and administration.

CCC will make loans available to producers of gum naval stores during the calendar year 1980 through the American Turpentine Farmers Association (herein referred to as ATFA), under the terms and conditions described in these regulations. The Producer Associations Division, ASCS, will supervise the administration of the program.

§ 1438.1637 Definitions.

(a) "Eligible producer" means, a producer who: (1) Is a member of ATFA in good standing under membership requirements approved by CCC (no producer who is otherwise eligible may be excluded from membership in ATFA), (2) is a participant in the Naval Stores Conservation Program for 1980 or otherwise follows one or more forestry conservation practices established by State and Federal Forestry services, as determined by ATFA, (3) has made satisfactory arrangements to pay an indebtedness to the U.S. Department of Agriculture or any of its agencies, as evidenced by the debt records maintained by the Agricultural Stabilization and Conservation County Committees of the U.S. Department of Agriculture, and (4) has executed, and has not breached his obligations under, the Producer's Marketing Agreement (ATFA Form 1), or any other similar agreement.

(b) "Eligible oleoresin" means oleoresin (1) which was produced in 1980 in the United States by an eligible producer, (2) which is free and clear from all liens and encumbrances, (3) the rosin content in which has not been previously pledged for a loan under this or any similar program, and in which the beneficial interest is and always has been in the producer, and (4) which will yield rosin of the grades and quality prescribed in paragraph (d) of this section.

(c) [Reserved][1]

(d) "Eligible rosin" means gum rosin which (1) was processed by the Olustee or similar method from eligible oleorosin, (2) grades "K" or better, (3) is free and clear from all liens and encumbrances, (4) has not previously been pledged for a loan under this or any similar program, and in which the beneficial interest is and always has been in the producer: *Provided*, That, when a producer's eligible oleoresin was commingled in the processing operation with oleoresin produced in the United States by other producers, the rosin tendered by the producer for advances, as representing the processed equivalent of the producer's eligible oleoresin, will be deemed to be, if otherwise eligible, rosin produced by such producer, (5) is packed to a net weight of 517 pounds, in eligible metal drums, (6) is transparent, (7) is free from visible foreign materials and contains no extraneous matter resulting from chemical or other treatment of the rosin, or of the oleoresin or the trees from which it came, and (8) conforms as to softening point to not less than Federal Specifications LLL-R-626b, wit: 158° Fahrenheit (American Society for Testing Materials No. E-28-67). Rosin must be federally graded, inspected and weighed or the weights checked by Federal Inspectors employed or licensed by CCC.

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[1] In a document revising § 1438.1637 at 45 FR 39493, June 11, 1980, paragraph (c) was omitted.

(e) "Eligible metal drums" means drums conforming to the specifications approved by CCC for metal drums for storing rosin. These specifications are obtainable from and on file in the office of ATFA.

§ 1438.1638 Loan to ATFA.

Under a Loan Agreement, CCC will make a loan to ATFA which will enable ATFA to make loan advances to eligible producers on eligible naval stores. As security for such loan, ATFA will pledge such naval stores to CCC; CCC has the right to establish a maximum aggregate disbursement at any time upon written notice to ATFA, but no such limitation shall apply with respect to naval stores tendered to ATFA by producers prior to such notice. The loan will be in an amount equal to (a) the amount of the loan advances made by ATFA to producers, except that the loan will be made only on full drums of eligible naval stores, (b) the administrative and operating expenses, approved by CCC, incurred by ATFA in making advances available to producers, and in the handling, preservation, and redemption of pledged naval stores, and (c) storage charges or other charges on pledged naval stores up to the time of aquisition of title thereto by CCC. The loan by CCC to ATFA shall bear interest at the rate announced by CCC for 1980 crops.

§ 1438.1639 Advances to producers.

ATFA will make advances to eligible producers on eligible naval stores only when such naval stores have been (a) processed (except where CCC and ATFA determine that unprocessed rosin content in oleoresin may be offered for advance), (b) placed in storage in the custody of an approved warehouseman who has entered into and is fully complying with a Warehouse Agreement (ATFA Form 2) with ATFA, or in the custody of ATFA acting under a Storage Agreement with CCC, and (c) offered for an Advance on Producer's Offer (ATFA Form 4), the date of which, unless a first offer and dated not later than September 1, 1980, shall be not later than thirty days from the date of delivery of eligible oleoresin to a processor, but in no event later than December 31, 1980, by the producer of the oleoresin, the rosin content of which or processed rosin from which has been so placed in storage. No warehouseman will be authorized to store pledged unprocessed rosin except upon approval by CCC of ATFA's written recommendation therefor and written demonstration by ATFA that there exists an immediate and substantial need for such storage. If there are any liens or encumbrances on the naval stores offered for advance, proper waivers are required on a Lienholder's Waiver and Agreement (ATFA Form 3). All processing charges, including the cost of eligible metal drums for rosin, and storage and other warehouse charges to the date of tender for advance, will be borne by the producer.

§ 1438.1640 Rate of advance to producers.

ATFA will make advances to eligible producers on eligible rosin or rosin content only, based on the support level of $76.00 per standard barrel (435 lbs. net weight each) of oleoresin (crude pine gum), processed basis. Although no advance is made on turpentine, an allowance is made for the estimated 1980 market value of the turpentine content in a barrel of oleoresin in determining the advance rate for rosin or rosin content. The loan rates on rosin are $24.99 for grade WG, $25.74 for grades X and WW, $24.59 for Grade N, $24.19 for Grade M, and $23.74 for Grade K, per hundred pounds net, packed in eligible metal drums. CCC reserves the right to reduce rosin loan rates, if the actual turpentine market price during 1980, when added to such rosin loan rates, results in a support level for crude pine gum in excess of 90 percent of parity. Also, CCC may increase or decrease grade premiums and discounts whenever market conditions warrant. ATFA will make advances to any eligible producer on the basis of the applicable advance rates in effect on the date of the applicable Producer's Offer.

§ 1438.1641 Maturity of loan.

The loan made by CCC to ATFA will be due and payable upon demand.

§ 1438.1642 Redemption by ATFA.

ATFA's right to redeem naval stores pledged by ATFA to CCC shall be subject to the terms and conditions of the Loan Agreement and any amendments thereto.Redemption shall be made upon payment of the redemption cost. The redemption cost will be determined by CCC and will be the amount outstanding under the Loan Agreement, including any unpaid accrued expenses and charges, plus interest applied ratably to the naval stores to be redeemed. Any naval stores redeemed will not be thereafter eligible for loan.

§ 1438.1643 Net gains.

ATFA will disburse in cash on a fair and equitable basis to participating producers all net gains, less cost of disbursement, resulting from ATFA's sale of redeemed naval stores, unless a disposition other than cash disbursement has been approved by CCC. For example, when net gains are insufficient to justify disbursement expenses, ATFA may upon request to and approval of CCC, utilize such net gains for and in behalf of all of its producer members.

§ 1438.1644 Right of CCC upon maturity.

Upon maturity and nonpayment of the loan, CCC will take title to any unredeemed naval stores, without a sale thereof, and CCC will have no obligation to pay or account to ATFA for any market value which such naval stores may have in excess of the amount of the loan, plus interest and charges.

§ 1438.1645 Personal liability.

Any fraudulent representation in the program documents by ATFA or the producer will render ATFA or the producer subject to criminal prosecution under applicable law, and personally liable for the amount by which the proceeds received upon the disposition of the naval stores involved are less than the amount of indebtedness incurred by ATFA with respect to such naval stores.

PART 1443—OILSEEDS

Subpart—Cottonseed Purchase Program Regulations

Sec.

1443.1 General statement.
1443.2 Administration.
1443.3 Availability of program.
1443.4 Eligible producer.
1443.5 Eligible cottonseed.
1443.6 Participating ginners.
1443.7 Grade basis for purchase price.
1443.8 Payment for cottonseed and transportation.
1443.9 Approved forms.
1443.10 Determination of quantity.
1443.11 Personal liability.
1443.12 Setoffs.
1443.13 Books and records.
1443.14 Benefits and contingent fees.
1443.15 Nondiscrimination in employment.

Subpart—Cottonseed Purchase Program Regulations

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070 and 1072, as amended, secs. 301 and 401, 63 Stat. 1053 and 1054, as amended, sec. 601, 70 Stat. 212; 15 U.S.C. 714b and 714c, 7 U.S.C. 1447, 1421, 1446d.

SOURCE: 33 FR, 15331, Oct. 16, 1968, unless otherwise noted.

§ 1443.1 General statement.

This subpart and any amendments hereto contain the basic terms and conditions under which CCC, as part of its price support program for cottonseed, will purchase from producers and participating ginners cottonseed of each crop for which an annual supplement to this subpart is issued. The annual supplement will specify the prices to be paid to producers and participating ginners by CCC for cottonseed of the applicable crop and will set forth other program provisions not contained in this subpart. CCC will purchase eligible cottonseed through county committees (a) from ginners who meet the requirements of § 1443.6 and who otherwise comply with the applicable provisions of this subpart (which ginners are referred to in this subpart as "participating ginners"), in areas where the State committee determines that crushers are paying ginners prices for cottonseed which are less than the f.o.b. prices at which CCC would purchase cottonseed from participating ginners, as specified in the applicable annual supplement, and (b) from eligible producers, in areas where the State committee determines that crushers or ginners or both are paying producers prices for cottonseed which are less than the prices at which CCC would purchase cottonseed from producers, as specified in the applicable annual supplement. As used in this subpart, "CCC" means the Commodity Credit Corporation, and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture. As used in this subpart, the words or phrases "Person," "State committee," "County committee," and "County office manager" shall each have the meaning ascribed to such words or phrases in the regulations pertaining to Reconstitution of Farms, Allotments, and Bases, Part 719 of this title, and any amendment thereto.

§ 1443.2 Administration.

(a) *Responsibility.* The program will be carried out by ASCS under the general supervision and direction of the Executive Vice President, CCC. In the field the regulations in this subpart will be administered by State and county committees and the New Orleans ASCS Commodity Office located at Wirth Building, 120 Marais Street, New Orleans, La. 70112 (referred to in this subpart as "the New Orleans Office"). The purchase, transportation, handling, and storage of cottonseed acquired by CCC under this subpart prior to delivery of the cottonseed to a crusher or to a storage facility approved by the New Orleans Office (such storage facility is referred to in this subpart as "approved storage facility") will be administered through State and county committees. Documents and contracts relating to such operations may be executed on behalf of CCC by any member of the county committee, county office manager, or other employee of the county committee designated by the county office manager. Contracts for the storage and handling of cottonseed acquired by CCC under this subpart, subsequent to delivery of the cottonseed to a crusher or to an approved storage facility, and for the sale, crushing, and processing of cottonseed will be executed by CCC contracting officers in the New Orleans Office.

(b) *Limitation of authority.* State and county committees, county office managers, and the New Orleans Office, do not have authority to modify or waive any of the provisions of this subpart.

(c) *State committee.* The State committee may take any action authorized or required in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also (1) correct or require a county committee to correct any action taken by such county committee which is not in accordance with this subpart or (2) require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) *Executive Vice President, CCC.* No delegation herein to a State or county committee or to the New Orleans Office shall preclude the Executive Vice President, CCC, or his designee, from determining any question arising under this subpart or from reversing or modifying any determination made by a State or county committee, or by the New Orleans Office.

§ 1443.3 Availability of program.

(a) *Area.* Subject to the provisions of § 1443.1, the purchase program will be available in all cotton-producing areas of the United States.

(b) *Time.* Purchases of cottonseed of any crop will be made in an area, when the State committee determines that such purchases are necessary to make the cottonseed price support program effective, from the date of such determination through the last day of February of the calendar year following the year in which the crop is grown. Whenever the final date of availability falls on a nonworkday for county offices, the applicable final date of availability shall be extended to the next workday.

§ 1443.4 Eligible producer.

An eligible producer is any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof, or an agency of such state or political subdivision, producing cottonseed in the capacity of landowner, landlord, tenant, or sharecropper.

§ 1443.5 Eligible cottonseed.

Cottonseed is eligible cottonseed if it meets the following requirements:

(a) *Area of production.* The cottonseed must be produced in the United States by an eligible producer.

(b) *Liens.* The cottonseed must be free and clear of liens or encumbrances, or proper waivers must be obtained.

(c) *Beneficial interest.* The beneficial interest in the cottonseed tendered to CCC by an eligible producer must be in the producer and must always have been in him or in him and a former producer whom he succeeded before the cottonseed was harvested. Any producer tendering cottonseed for purchase by CCC must have the legal right to sell the cottonseed. Eligible producers who are members of a cooperative participating ginner may act collectively through such ginner in selling their eligible cottonseed to CCC if (1) the cottonseed to be sold is delivered to the cooperative gin by such producer-members, and (2) the cooperative gin has been granted the legal right to sell the cottonseed by such producer-members.

(d) *Succession of interest.* To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farming unit on which the cottonseed was produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farming unit on which the cottonseed is produced shall not constitute succession.

(e) *Doubtful cases.* Any producer in doubt as to whether his interest in the cottonseed complies with the requirements of this section, before requesting price support, should make available to the county committee all pertinent information which will permit a determination to be made by CCC.

§ 1443.6 Participating ginners.

A participating ginner, to be eligible to sell cottonseed to CCC, must execute a Form CCC-901, Participating Ginner's Agreement, with CCC, and pay producers not less than the CCC purchase price of cottonseed to producers announced in the annual supplement to this subpart. The provisions of the Participating Ginner's Agreement shall continue in effect through the last day of February of the calendar year following the year in which the crop is grown, unless the ginner is notified in writing by the county committee that he is no longer eligible to participate in the program or the ginner gives written notice to the county committee that he is withdrawing from the program. In the event of any such notification, the ginner will no longer be eligible to tender cottonseed to CCC for purchase. The provisions of the Participating Ginner's Agreement shall include an assurance that the ginner's participation in the price support program will be conducted and his facilities operated in compliance with all requirements imposed by or pursuant to the regulations governing nondiscrimination in federally assisted programs of the Department of Agriculture, Part 15 of this title, which effectuates Title VI of the Civil Rights Act of 1964. All cottonseed tendered to CCC by a participating ginner shall be cottonseed from cotton which is ginned at his facility; cottonseed acquired by the ginner which is not from such cotton shall be kept separate and apart from cottonseed tendered or to be tendered to CCC. The maximum quantity of cottonseed from any crop which a participating ginner may tender to CCC is the quantity of seed of such crop which was ginned from cotton at his facility and which he has purchased from eligible producers at not less than the prices required by this section.

§ 1443.7 Grade basis for purchase price.

(a) *Purchases from producers.* (1) Except as provided otherwise in this paragraph (a), the grade of cottonseed purchased from a producer by CCC shall be considered to be the average grade for the county in which the purchase is made on the basis of the latest cottonseed grade report for the county published by ASCS, or on such other basis as the Executive Vice President, CCC, may approve.

(2) For any county where both upland and American-Egyptian cotton are grown, the ASCS grade report for such county shall specify the average grade for each such type of cottonseed and each such type of cottonseed shall be purchased at prices determined on the basis of the average grade for each such type of cottonseed.

(3) For any county where both upland and Sea Island or Sealand cottonseed are grown, the ASCS grade report for such county will specify the average grade for all cottonseed in the county without regard to type and the purchase price for all cottonseed produced in the county shall be determined on the basis of such average grade.

(4) Whenever there is insufficient grade information available to make a determination of the average grade of cottonseed of a particular crop produced in a county, the grade of any cottonseed purchased shall be considered to be grade 90, unless another grade is approved by the State committee on the basis of official chemical analysis of the cottonseed being purchased in the area, or on the basis of other reasonable data.

(5) If a producer delivers to CCC at least 20,000 pounds of cottonseed within any period of 3 consecutive days, the grade of such cottonseed may, at the producer's request, be determined in accordance with the C&MS Service and Regulatory Announcement No. 179, as amended, "Standards for Grades of Cottonseed Sold or Offered for Sale for Crushing Purposes Within the United States" (hereinafter referred to as "the Cottonseed Standards"), §§ 61.101 through 61.104 of this title, by chemical analysis of samples drawn from the cottonseed by federally licensed cottonseed samplers or by such other persons as may be approved by the county committee and forwarded to and analyzed by federally licensed cottonseed chemists. The cost of such sampling and analysis shall be borne by CCC.

(b) *Purchase from ginners.* (1) The grades of cottonseed purchased from participating ginners by CCC shall be determined in accordance with the Cottonseed Standards by chemical analysis of samples drawn from the cottonseed by federally licensed cottonseed samplers or by such other persons as are approved by the county committee, and forwarded to and analyzed by federally licensed cottonseed chemists. The cost of such sampling and analysis shall be borne by CCC.

(2) Cottonseed which is "below-grade" or "off-quality," as defined in the Cottonseed Standards, will be purchased from participating ginners by CCC at the market value at time of tender of such cottonseed, as determined by CCC.

(3) A ginner tendering cottonseed of any crop for purchase by CCC must not have paid any producer for cottonseed of that crop purchased by the ginner less than the price which CCC would pay to the producer for such cottonseed, as specified in the applicable annual supplement to this subpart, based on the average grade for the county in which the gin is located, determined as provided in paragraphs (a) (1) through (4) of of this section.

(4) Notwithstanding the preceding requirements as to price, a participating ginner, after first notifying the county committee of the county where the gin is located of his intention to do so, may reduce the price paid to producers below the price established on the basis of the average grade for the county: *Provided,* That:

(i) He shall not pay any producer for cottonseed, during the period the ginner is paying such reduced price, less than the price which CCC would pay to the producer for such cottonseed, as specified in the applicable annual supplement to this subpart, based on the average grade of cottonseed produced at the gin during such period;

(ii) The average grade of cottonseed produced at the gin during such period shall be determined on the basis of official chemical analysis covering such cottonseed or on such other reasonable basis as may be approved by the State committee; and

(iii) The ginner furnishes the county office with certified copies of such chemical analysis or other evidence satisfactory to the State committee, showing the average grade of cottonseed produced at the gin during such period.

If it is determined by the State committee or county committee that any ginner has paid any producer for cottonseed of any crop less than the minimum price which he was obligated to pay under this paragraph (b), such ginner shall, without prejudice to any other rights which CCC may have, be ineligible to make any further sales to CCC of cottonseed of that crop, unless he first pays each such producer the difference between the price previously paid to the producer and the price the producer should have received.

(c) *Advances by cooperative gins.* If the participating ginner is a cooperative gin and if the marketing agreements between the gin and its members provide for advances, the gin may advance a part of the purchase price at the time each lot of cottonseed is purchased and pay the balance after completion of ginning of the applicable crop but not later than December 31 of the calendar year following the year in which the crop of cotton is grown. Such balance shall be made in cash unless the State committee has approved deferred payment by issuance of revolving-fund certificates or by other methods of retention of funds for capital purposes. The State committee will approve deferred payment only by cooperative gins which it determines (1) are organized under applicable State law as an association of persons who are engaged in the production of agricultural commodities, (2) meet producer ownership, membership meeting and voting requirements of applicable State law, (3) have more than 50 percent of their equity capital owned by producer-members, and (4) are operating on a financially sound basis. Any such cooperative gin desiring approval to make deferred payment shall submit its application for approval to the county committee of the county where the gin is located not later than the date Form CCC-901, Participating Ginner's Agreement, is filed, or such later date as the State committee may for good cause approve. The cooperative gin shall submit with its application a certified statement that the gin meets the requirements of paragraphs (c) (1) through (3) of this section and a complete and accurate statement of its current financial condition. The cooperative gin shall also submit with its application a copy of its bylaws, board of directors resolution or other document which authorizes the gin to make deferred payments for the cottonseed and such other information regarding its cooperative status and financial condition as the State committee may request.

[33 FR 15331, Oct. 16, 1968; 33 FR 15703, Oct. 24, 1968]

§ 1443.8 Payment for cottonseed and transportation.

(a) *Payment and delivery.* (1) Payments for cottonseed purchased from producers and participating ginners by CCC and for authorized transportation performed by such producers and ginners in accordance with paragraph (a)(2) of this section shall be made by county offices by means of sight drafts drawn on CCC.

(2) The cottonseed shall be delivered to CCC f.o.b. conveyance or carrier at the gin, or at a point designated by the county committee. If the county committee designates a point of delivery other than the gin, the producer or ginner shall be paid for transporting the seed from the gin to such point at a rate not in excess of the local commercial rate for such transportation services, as determined by the county committee.

(b) *Passage of title.* Title and risk of loss to the cottonseed shall pass to CCC upon delivery of the cottonseed to CCC.

§ 1443.9 Approved forms.

The approved forms, together with the provisions of this subpart, including amendments thereto, and the applicable supplement for the crop, shall govern the rights and responsibilities of producers and participating ginners under the CCC cottonseed purchase program. Approved forms may be obtained from county offices. Documents executed by an administrator, agent, executor, or trustee will be acceptable only where valid in law.

(a) *Producers.* Producer's Voucher, Form CCC-905, shall be executed by the producer when his cottonseed is purchased by CCC.

(b) *Cotton ginners.* (1) Each cotton ginner desiring to sell cottonseed to CCC pursuant to this subpart shall, prior to tender of any cottonseed for sale, file a Participating Ginner's Agreement, Form CCC-901, with the county office of the county in which each of his gins is located. The filing of such agreement does not obligate the ginner to sell any cottonseed to CCC, but if cottonseed of any crop is tendered by the ginner for sale to CCC under this subpart, the ginner must have complied with all provisions of this subpart applicable to purchases of cottonseed of that crop by a participating ginner. A cooperative gin desiring approval to make deferred payment of part of the purchase price of the cottonseed, as provided in paragraph (c) of § 1443.7, shall submit its application for approval to the county committee of the county where the gin's office is maintained.

(2) The ginner shall prepare and execute a Ginner's Voucher and Certificate, Form CCC-904, covering cottonseed tendered to CCC for purchase and shall deliver the form to the county office at time the seed is delivered to CCC for purchase.

(3) Each Form CCC-904 submitted by a ginner to the county office shall be supported by weight certificates or warehouse receipts covering the cottonseed purchased which have been issued by a crusher, an approved storage facility, or a representative of the county committee at a designated storage site. In the absence of warehouse receipts guaranteeing grade, Form CCC-904 shall be supported by official chemical analysis certificates covering the cottonseed and identifying such cottonseed by lot number or receipt numbers, or both, and weights.

§ 1443.10 Determination of quantity.

The quantity of cottonseed purchased from a producer by CCC shall be the gross weight (or if the cottonseed is graded as provided in § 1443.7(a)(5), the net weight) actually delivered to CCC, as determined by a representative of the county committee, by an approved storage facility, or by a crusher. The quantity of cottonseed purchased from a producer by a participating ginner shall be the gross weight of the cottonseed as customarily determined by the ginner when making purchases of cottonseed from producers. The quantity of cottonseed purchased from a ginner by CCC shall be the net weight of the cottonseed which is the gross weight thereof less the weight of all foreign matter in excess of 1 percent.

§ 1443.11 Personal liability.

If the producer or participating ginner has made a fraudulent representation in connection with a price support purchase by CCC under this subpart or in the purchase documents, he shall be personally liable, aside from any additional liability under criminal or civil fraud statutes, for any loss which CCC sustains upon the cottonseed delivered under the purchase. For the purpose of this program such loss shall be deemed to be the price paid to the producer or participating ginner on the cottonseed delivered under the purchase plus all costs sustained by CCC in connection with the cottonseed together with interest on such amounts at the rate announced in a separate notice published in the FEDERAL REGISTER, less the market value, as determined by CCC, of the cottonseed on the date of delivery, or the sales price if the cottonseed is sold in order to determine its market value.

§ 1443.12 Setoffs.

When CCC makes direct purchases of cottonseed from producers, setoffs will be made as follows:

(a) ***Facility and drying equipment loans.*** If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment is payable under the provisions of the note evidencing such loan out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC as payee of such amount to the extent of such installment(s), but not to exceed that portion of the amount remaining after deduction of amounts due prior lienholders.

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC, or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the program provided for in this subpart, after deduction of amounts provided for in paragraph (a) of this section, shall be applied, as provided in the Secretary's Setoffs and Withholdings Regulations, Part 13 of this title as amended, to such indebtedness.

(c) *Producer's right.* Compliance with the provisions of this section shall not deprive the producer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1443.13 Books and records.

Each participating ginner tendering cottonseed to CCC for purchase shall keep accurate books, records, and accounts with respect to all purchases of cottonseed (including the name of producer, date of receipt, weight, and purchase price of each lot of cottonseed purchased) and all other transactions under this subpart for a period of at least 3 years from the last day any cottonseed is tendered to CCC for purchase under the applicable Participating Ginner's Agreement. The participating ginner shall permit authorized employees of the U.S. Department of Agriculture at any time during customary business hours to inspect, examine, audit, and make copies of such books, records, and accounts.

§ 1443.14 Benefits and contingent fees.

(a) *Officials not to benefit.* No member of or Delegate to the Congress of the United States or Resident Commissioner, shall be admitted to any share or part of any contract resulting from tenders of cottonseed by a participating ginner under this subpart or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such a contract if made with a corporation for its general benefit and shall not extend to any benefits that may accrue from such contract to a member of or Delegate to the Congress or a Resident Commissioner in his capacity as a producer of cottonseed.

(b) *Contingent fees.* By tendering cottonseed to CCC for purchase under this subpart the participating ginner warrants that no person or selling agency has been employed or retained to solicit or secure the Participating Ginner's Agreement upon an understanding or agreement for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the participating ginner for the purpose of selling cottonseed. For breach or violation of this warranty, CCC shall have the right to annul the Participating Ginner's Agreement without liability, or in its discretion to deduct from the purchase price of the cottonseed the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1443.15 Nondiscrimination in employment.

(a) *Equal opportunity clause.* During the period between the date the participating ginner files his Participating Ginner's Agreement and the earlier of the date on which he gives the county committee the notice referred to in § 1443.6, or the date on which he completes his final delivery to CCC under this subpart, the participating ginner agrees as follows:

(1) The participating ginner will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The participating ginner will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action

shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The participating ginner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the county committee setting forth the provisions of this nondiscrimination clause.

(2) The participating ginner will, in all solicitations or advertisements for employees placed by or on behalf of the participating ginner, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The participating ginner will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the county committee, advising the labor union or workers' representative of the participating ginner's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The participating ginner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The participating ginner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the participating ginner's noncompliance with the nondiscrimination clause of this contract, or with any of such rules, regulations, or orders, the Participating Ginner's Agreement may be canceled, terminated, or suspended in whole or in part and the participating ginner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The participating ginner will include the provisions of paragraphs (a)(1) through (7) of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The participating ginner will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the participating ginner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the participating ginner may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Substitute terms.* Effective October 14, 1968, the words "race, color, religion, sex, or national origin" shall be substituted for the words "race, creed, color, or national origin" wherever they appear in paragraph (a) of this section.

(c) *Certification of nonsegregated facilities.* By the filing of a Participating Ginner's Agreement, the participating ginner certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The participating ginner agrees that breach of this certification is a violation of the Equal Opportunity clause in this section. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually.)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001 or 15 U.S.C. 714m(a).

PART 1446—PEANUTS

Subpart—General Regulations Governing 1979 through 1981 Crop Peanut Warehouse Storage Loans and Handler Operations

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WAREHOUSE STORAGE LOANS

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bpart—General Regulations Governing 1979 through 1981 Crop Peanut Warehouse Storage Loans and Handler Operations

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as ended (15 U.S.C. 714b and c); secs. 101, 3, 401, 63 Stat. 1051, as amended (7 U.S.C. 11, 1421); sec. 359, 52 Stat. 31, as amended U.S.C. 1359), unless otherwise noted.

SOURCE: 44 FR 33829, June 13, 1979, unless herwise noted.

GENERAL

446.1 General statement.

a) *Scope.* This subpart sets forth nditions under which producers and ndlers may trade in the 1979, 1980, d 1981 crops of peanuts. This sub- rt also sets forth the terms and con- ions under which eligible producers ting collectively through specified arketing associations (referred to verally in this subpart as "the asso- ation") may obtain price support on eir 1979, 1980, and 1981 crops of rmers stock peanuts. Eligible farm- s stock peanuts produced by eligible oducers which are quota peanuts all be eligible for price support at e quota support rate. Farmers stock anuts which are not quota peanuts all be eligible for price support at e additional support rate. Additional anuts may only be marketed rough contracts with handlers or by ing pledged to Commodity Credit rporation (CCC) for loans. Annual pplements to this subpart will speci- support prices, and other terms and nditions not contained in this sub- rt which are applicable to the ware- use storage loan program for pea- ts of a particular crop.

(b) *Price support advances.* Producers may obtain price support loans at the rates specified in the applicable annual supplement through the applicable association. Each association will make appropria' loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loan will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations containing the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers on any crop farmers stock peanuts will be published separately in the FEDERAL REGISTER.

(Approval by the Office of Management and Budget under control number 0560-0024)

[44 FR 33829, June 13, 1979, as amended at 47 FR 745, Jan. 7, 1982; 47 FR 28070, June 29, 1982; 48 FR 21536, May 13, 1983]

§ 1446.2 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, and the Producer Associations Division, Agricultural Stabilization and Conservation Service (ASCS) will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or wa've any of the provisions of this subpart or any amendments or supplements thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.3 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the content or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The support rate published in annual crop supplements to this part applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(f) *Compliance regulations.* The Regulations Governing Acreage and Compliance Determinations for Farm Marketing Quotas, Acreage Allotments, and Related ASCS Programs, as amended, issued by the Administrator, ASCS, and effective for the applicable crop, Part 718 of this title.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exporting, or both, on which a contract has been entered into between a handler and producer in accordance with § 1446.5.

(h) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees in Part 7 of Subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Carribbean Area Agricultural Stabilization and Conservation committee shall insofar as applicable, perform the functions of the county committee.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Domestic edible use.* Use for milling to produce domestic food products or seed and use on the farm.

(k) *Effective farm allotment.* The effective farm peanut acreage allotment for the applicable crop of peanuts, as defined in the peanut marketing quota regulations, Part 729 of this title.

(l) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the marketing quota regulations, Part 729 of this title.

(m) *Extra large kernels.* Shelled Virginia type peanuts which are "whole" and free from "minor defects" and "damage" as such terms are defined in the U.S. Standards for Shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 21.5/64 by 1 inch openings.

(n) *Farm.* A farm, as defined in the Regulations Governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this title.

(o) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(p) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under Part 718 of this title.

(q) *Form MQ-94 and Form FVQ-95*—(1) *Form MQ-94.* Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FVQ-95.* Federal-State Inspection Service, Peanut Inspection Note Sheet.

(r) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(s) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(t) *Lot.* That quantity of farmers stock peanuts for which one MQ-94 or other inspection certificate is issued. In case of farmers stock peanuts delivered to the association for a loan advance, a lot shall consist of not more than the content of one vehicle, or two or more vehicles containing approximately 24,000 pounds.

(u) *Marketing cards.* Forms MQ-76 issued each year according to Part 729 of this title by ASCS county offices to growers for use in marketing peanuts of the applicable crop. Each Form MQ-76 shall indicate the farm operator's eligibility for quota price support and the pounds that may be marketed as quota peanuts and contract additional peanuts.

(v) *Marketing quota penalties.* The penalties prescribed in the marketing quota regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations.

(w) *Marketing quota regulations.* The Allotment and Marketing Quota Regulations, Part 729 of this title described in 7 CFR Part 729 (1981 ed.).

(x) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(y) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts (1) foreign material, and (2) moisture in excess of seven percent in the Southwestern and Southeastern areas, and eight percent in the Virginia-Carolina area.

(z) *Edible export standard for contract additional peanuts.* (1) Raw shelled or inshell peanuts of any crop exported for human consumption shall meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as specified in the outgoing quality regulations for such crop in the Marketing Agreement for peanuts No. 146.

(2) Peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements may be exported if the handler certifies to the association that such deviations are acceptable (i) to the export buyer and (ii) under the Marketing Agreement.

(aa) *Eligible country.* Any destination outside the United States, other than any country or area for which a validated export license is required under regulations issued by the Bureau of International Commerce, unless such license for shipment or transshipment thereto has been obtained from the Bureau, except that neither Canada nor Mexico shall be considered an eligible country for the export of peanut products other than treated seed peanuts.

(bb) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States to become part of the mass of goods of the country of destination.

(cc) *Fragmented peanuts.* Peanuts not more than 20 percent of which are whole kernels which will not pass through the following openings, by type: Spanish 15/64 x 3/4 inch slot; Runner 15/64 x 3/4 inch slot; and Virginia 15/64 x 1 inch slot.

(dd) *Loan value.* The amount of the loan which may be obtained under these regulations on a lot of eligible farmers stock peanuts computed for quota or additional peanuts, as applicable, on the basis of the weight, quality, and the support values for such type appearing in the applicable crop supplement.

(ee) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(ff) *Peanut products.* Any products manufactured or derived from peanuts such as but not limited to peanut candy, peanut butter, peanut granules or peanut flakes.

(gg) *Peanut receiving and warehouse contract.* Form CCC-1028 Identity Preserved, Form CCC-1028-A, Commingled Storage, or any other form approved by CCC for this purpose.

(hh) *Peanut segregations*—(1) *Segregation 1.* Farmers stock peanuts which (i) have at least 99 percent peanuts of one type, (ii) have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold;

(2) *Segregation 2.* Farmers stock peanuts which (i) have less than 99 percent peanuts of one type, or (ii) have more than two percent damaged kernels or more than 1.00 percent con-

cealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold; *Provided however,* if such peanuts are placed under additional loan and purchased under the immediate buy back procedure, as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold. *Provided, however,* if such peanuts are placed under additional loan and purchased under the immediate buy back procedure as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(ii) *Pools.* Accounting pools established by the association and on which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(jj) *Quota peanuts.* Peanuts which are eligible for domestic edible and related use, are marketed or considered marketed from a farm as quota peanuts, and which are not in excess of the farm poundage quota.

(kk) *Quota support rate.* The support rate published in annual crop supplements applicable to quota peanuts.

(ll) *Raw peanuts.* Inshell, shelled peanuts, or blanched peanuts which have not passed through any other processing operation.

(mm) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner type: $^{16}/_{64}$ x ¾ inch slot
Spanish type: $^{15}/_{64}$ x ¾ inch slot
Virginia type: $^{15}/_{64}$ x 1 inch slot

(nn) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as defined in the marketing quota regulations.

(oo) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(pp) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(qq) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent having shells damaged by (1) discoloration, (2) cracks or broken ends, or (3) both.

[44 FR 33829, June 13, 1979, as amended at 47 FR 28070, June 29, 1982; 48 FR 21536, May 13, 1983]

HANDLER OPERATIONS

§ 1446.4 Handler responsibilities.

(a) *Examination of producer's marketing card.* All handlers shall examine producer's marketing cards and record each purchase or delivery of peanuts as required in part 729 of this title. Any peanuts delivered under the additional peanut contract (Form CCC-1005) in excess of the provisions of such contract shall be considered as a marketing of quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at time of delivery.

(b) *Purchase records.* (1) Purchases of quota peanuts on which an MQ-94 is prepared. Each handler shall maintain records of the peanuts, the State and county code, and the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler and must indicate the quantity, type, date of purchase, and applicable MQ-94 serial number. The handler shall imprint forms MQ-94 and FVQ-95 with the farm identification card, the peanut buyers card, and the buying point card.

(2) Purchases of quota peanuts from producers on which MQ-94 is not prepared. The handler shall immediately transmit a record of such purchase to CCC. Such record shall show name and address of producer, State and

county code, farm number, handler's name, address and registration number, buying point, any marketing quota penalty collected, quantity, and date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained within their operation in such a manner that will enable representatives of the Secretary to readily reconcile the quantities, grades, and qualities of all such peanuts disposed of by a handler. Records concerning the acquisition and disposal of contract of additional peanuts must also be kept in such a manner that representatives of the Secretary can readily determine compliance with the regulations and contract provisions.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.5 Contracts for additional peanuts for crushing and export.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers on Form CCC-1005 to buy additional peanuts from producers for crushing or export, or both. The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by an inspector when such peanuts are delivered by a producer. All such contracts shall be completed and submitted to the county office for approval prior to June 15 of the year in which the crop is produced. Such contracts cannot be sold or traded, except under the terms and conditions specified in paragraph (b) of this section.

The county office shall summarize the contracts and send such summary to the Association through the State office. Contracts shall include at least the following provisions:

(1) Name and address of the farm operator, State and county code, and farm serial number of the farm.

(2) Name, address of handler and registration number.

(3) Amount of Segregation 1 peanuts in pounds by type.

(4) Contract price shown as a percentage of quota peanut support rate.

(5) Requirement for disclosure by producer of any liens on peanuts on date of delivery.

(6) A provision that the producer shall not be liable for failure to deliver against such contract an amount of peanuts in excess of the actual production of such type and quality on the farm: *Provided,* That such physical loss of production resulted solely from an external source such as drought, fire, lightning, inherent explosion, windstorm, tornado, flood, or other acts of God.

(7) Signature of farm operator and producer if different from operator.

(8) Signature of handler or authorized agent.

(9) The following agreement by the handler:

> I agree that I will either export or crush the peanuts delivered under this contract as provided in Part 1446, Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, as amended, by August 31 following the calendar year in which the crop is grown, except that if the final date is extended by the Commodity Credit Corporation to November 30 of that year, I agree to dispose of such peanuts by November 30 of that year, and that, upon my failure to do so, I shall be subject to a marketing quota penalty, as specified in such regulations, on all such peanuts which have not been so crushed or exported. I further agree that if I contract with another handler to market any such peanuts, I shall include as part of the contract the agreement contained herein, and upon my failure to do so, I shall be subject to a marketing quota penalty as specified in the regulations on all such peanuts.

(b) *Contract transfers and delivery of contracted peanuts to other handlers.* If a handler is unable to perform under contracts with producers for additional peanuts because of conditions beyond his control, including but not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities, the handler and the producer may agree to the delivery of the peanuts to other handlers under the terms of the original contract or under modified terms. Such transfers shall not be valid unless they are approved in writing by the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(c) *Deliveries under optional provisions of the contract.* Contracts may also include provisions under which a specified quantity of Segregation 1 peanuts in excess of the quantity specified in paragraph (a) of this section may be delivered under the contract: Provided, That the quantity of Segregation 1 peanuts specified in paragraph (a) of this section has been delivered and the producer retains the right to market Segregation 1 peanuts as quota peanuts to the extent that the farm poundage quota has not been filled. Contracts may also provide for delivery of Segregations 2 and 3 peanuts without regard to any quantity limits specified in this section.

(d) *Contracts between handlers.* Handlers may contract with other handlers to market contract additional peanuts. Such contracts must contain the agreement specified in paragraph (a)(9) of this section and an agreement that such agreement will be included in all subsequent contracts covering resale of such peanuts.

[Amdt. 5, 46 FR 61638, Dec. 18, 1981]

§ 1446.6 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practices and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date and place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar value out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.7 Use of additional peanuts as domestic edible peanuts.

(a) *"Immediate Buyback" purchase.* During harvest season, a handler shall have the right to purchase additional peanuts from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus handling charges. The purchase (i.e., the "immediate buyback purchase") may be made only from the association and only on the date such peanuts were offered by producers to the association as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by the association only if the producer has signed the applicable MQ-94 in the remarks section indicating such peanuts are eligible for "immediate buyback." The handler shall: (1) As an agent for the association, advance to the producer price support for the peanuts at the additional loan rate; (2) pay to the producer any agreed premiums for the delivery of such peanuts by the producer to the handler; and (3) forward to the association a check payable to CCC for the peanuts in an amount equal to the quota loan value of the peanuts, as well as any handling charges. The check and applicable MQ-94 will identify the peanuts as additional peanuts that may be used as domestic edible peanuts and must be transmitted to the association (as evidenced by a postmark) not later than the third work day (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. The association shall credit such receipts to the additional loan pool for such peanuts. If the accompanying MQ-94 has not been signed by the producer, the association shall return the check to the handler and the peanuts so identified will be considered to have remained under price support loan.

(b) *Purchases subsequent to delivery.* Handlers may also purchase additional peanuts from the loan pool for domestic edible use after delivery by producers to the associations, under terms and conditions approved by CCC. The minimum price for such purchases shall be the applicable carrying charges plus (i) not less than 105 percent of the quota loan value of the peanuts if purchased not later than December 31 of the marketing year; or (ii) not less than 107 percent of the quota loan value if purchased after December 31 of the marketing year.

[46 FR 47761, Sept. 30, 1981]

§ 1446.8 Compliance by handlers of contract additional peanuts.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or export to an eligible country in accordance with the conditions set forth in these regulations. All handler's records shall be subject to a review by CCC or other representatives of the Secretary to determine compliance with the provision of this subpart. Refusal to make such handler's records available to authorized representatives of the Secretary or the failure of such records submitted to establish such disposition by the handler shall constitute prima facie evidence of noncompliance with this subpart. Reviews shall be made by the Association in accordance with guidelines established by CCC. The Association shall not take any administrative actions concerning program violations prior to notification by the Director, Producer Associations Division, Agricultural Stabilization and Conservation Service (ASCS). Handlers shall have the option, upon prior notification by the handler of the Association, to select one of the two methods of supervision for handling and disposing of contract additional peanuts as provided in §§ 1446.9 and 1446.10. Each handler must select one method of supervision prior to the beginning of processing or loadout of contract additional peanuts and use the method selected to account for the disposition of all contract additional peanuts purchased from producers.

(a) *Quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts than could reasonably be produced from the quantity of peanuts having the grade, kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year and of those purchased under § 1446.7, whether or not additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of farmers stock peanuts determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold.

(b) *Method of determining compliance*—(1) *Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan and contract additional peanuts. In such instance, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage except when such peanuts are purchased from the Association for domestic edible and related use on an in-grade, in-weight basis. Contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar value basis less a one-time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value for Virginia type peanuts and 3.5 percent for all other types. However, if the contract additional peanuts are graded out and accounted for prior to February 1, the adjustment shall be 3.5 for Virginia type and 3.0 percent of the dollar value for all other peanuts. Contract additional peanuts shall also be accounted for by screen sizes if the handler elects to use the nonphysical method of supervision.

(2) *Identity preserved storage*—(i) *Physical method of supervision.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts and settled on a

dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices.

(ii) *Nonphysical method of supervision.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts at time of grade out and settled on a dollar value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value for Virginia type peanuts and 3.5 percent for all other types. However, if the contract additional peanuts are graded out and accounted for prior to February 1, an adjustment shall be made in an amount equal to 3.5 percent for Virginia type and 3.0 percent of the dollar value for all other type peanuts. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices. Such peanuts shall also be accounted for by screen sizes.

(c) *Disposition.* Handlers shall dispose of all contract additional peanuts by August 31 (the final date for exportation or crushing), following the calendar year in which the crop was grown, except that this final date shall be extended to November 30 of that year by CCC if the handler, by August 31, complies as follows:

(1) Furnishes information to the Association showing that the contract additional peanuts have been milled and positive lot identified;

(2) Furnishes the association the name and location of storing facilities of the contract additional peanuts;

(3) Provides a written statement of agreement to the Association to pay any supervision costs incurred on the contract additional peanuts after August 31; and

(4) Provides a written statement of agreement to the Association that such contract additional peanuts will not be substituted and used in the domestic edible and related markets.

(d) *Penalty rate for unintentional marketing errors*—(1) *Penalty rate.* The penalty rate for unintentional marketing errors for the 1978 through 1981 crops of peanuts shall be 40 percent of the basic quota support rate for the crop year in which the peanuts were produced. The penalty rate shall remain at 120 percent of the basic quota support rate in any case where the handler marketed a larger quantity or higher grades than could reasonably have been produced from the quantity of peanuts having the grade kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year, whether or not additional peanuts were acquired by the handler.

(2) *Requests for reduction of penalty.* Handlers requesting a reduction of the marketing quota penalty shall file a written report immediately following discovery of the marketing error with the Producers Associations Division, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013. The report shall contain the following information:

(i) A full explanation of the error and circumstances which caused the marketing error;

(ii) Any corrective measures taken by the handler when the error was discovered; and

(iii) A full explanation stating why a reduction of the marketing quota penalty would not impair the effective operation of the peanut price support program. CCC reserves the right to ask for any necessary additional information.

(3) *Action on request for reduction of penalty.* The Deputy Administrator, Commodity Operations, will issue a final determination on requests for reduction of marketing quota penalties for errors by handlers. Each case shall be considered separately on its individual circumstances.

(e) *Peanuts on which penalty is due.* If the marketing of contract additional peanuts for which a penalty is to be assessed was done unintentionally or unknowingly by a handler, the penalty shall be assessed at the reduced rate provided for in § 1446.8(d)(1) upon a final determination by the Deputy Administrator, Commodity Operations, that the error in marketing of such peanuts was done unintentionally or unknowingly and that a reduction in the amount of the penalty would not impair the effective operation of the price support program for peanuts. The provisions of this paragraph shall be applicable only to handlers who made a good faith effort to comply fully with the terms and conditions of the program.

[44 FR 33829, June 13, 1979, as amended at 45 FR 24443, Apr. 10, 1980; 46 FR 45113, Sept. 10, 1981; 47 FR 28070, June 29, 1982; 48 FR 21536, May 13, 1983]

§ 1446.9 Physical supervision and handling of contract additional peanuts.

The Association shall conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, weighing, and shipping. By selecting the option of physical supervision as provided in this section, the handler agrees that all of the handler's contract additional peanuts will be handled and accounted for under the provisions of this section.

(a) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, crushed, packaged, shipped, or otherwise handled.

(2) May inspect such peanuts and the oil, meal, and other products thereof, and

(3) May inspect the premises, facilities, operations, books, and records to the extent necessary to determine that such peanuts have been handled in accordance with these regulations.

(b) *Notifying the association.* Before moving or processing any peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, export or domestic use in peanut products to be exported. Except as authorized by the association, positive lot identity shall be maintained when peanuts are transported or stored in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identity.

(d) *Replacements.* The identical additional farmers stock peanuts contracted shall be handled in accordance with this section except that with prior notification and approval of the association, farmer stock quota peanuts of the same crop, type, quality, and area may be used to replace such additional peanuts. The identical additional milled peanuts shelled under supervision of the association shall be disposed of in accordance with this section, except that with prior notification and approval of the association, such peanuts may be used to replace, in domestic use, quota peanuts of the same crop, type, area, and screen size, which have been exported. The quota peanuts exported, for which replacement is requested, must have been positive lot identified and otherwise handled as additional peanuts. Additional peanuts may be used in domestic edible and related uses with prior notification and approval of the association and upon presentation of the association of an irrevocable letter of credit in an amount not less than 120 percent of the quota support rate on any portion of the lot for which replacement has not been approved. Such letter of credit shall be issued in a form and by a bank acceptable to CCC. The handler shall deliver to the association satisfactory evidence that a like amount of quota peanuts of appropriate screen sizes have been exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after the final date for exportation. If satisfactory evidence is not presented by such date, the association will draw against the letter of credit the full amount of the marketing quota penalty applicable to the quantity of peanuts on which an accounting was not made.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(f) *Domestic sale or transfer*—(1) *Farmers stock.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of farmers stock contract additional peanuts to the association and obtain written approval prior to any physical movement of the peanuts from the buying point. Approval of such contracts may be made before or after delivery by the producer.

Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees in writing to handle and crush or export as raw peanuts or peanut products in accordance with the terms and conditions of these regulations.

(2) *Milled peanuts.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of milled contract additional peanuts to the association and obtain approval prior to any physical movement of the peanuts. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush or export the peanuts in accordance with the terms and conditions of these regulations.

(g) *Disposal of additional contract peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exporting to an eligible county as follows:

(1) All kernels may be crushed domestically, or

(2) All kernels may be exported for crushing, if fragmented, or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically, or

(ii) Exported for crushing if peanuts are fragmented, or

(4) All of the peanuts may be exported as farmers stock peanuts, or

(5) Peanuts may be exported as peanut products if such peanuts meet edible export standards, or

(6) Peanuts may be exported as milled or inshell peanuts.

(h) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion thereon of the following statement, "This shipment consists of lots of meal which contain aflatoxin ranging from———to———PPB and averaging———PPB."

(i) *Final dates for scheduling supervision.* Additional contract farmers stock peanuts shall be scheduled for supervision by the association during the normal marketing period but not later than July 31 following the calendar year in which the crop is grown, unless prior approval of a later date is authorized by the association.

(j) *Export provisions*—(1) *General.* Exports to Southern Rhodesia, North Korea, Vietnam, Cambodia, and Cuba are regulated by U.S. Department of Commerce regulations and require a validated export license. Additional information concerning the regulations may be obtained from the Bureau of International Commerce or from the field office of the Department of Commerce.

(2) *Export to a U.S. Government agency.* Except for the export of raw peanuts to the military exchange services for processing outside the United States, export of peanuts in any form by or to a United States government agency shall not be considered an export to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency for International Development are not considered sales

to a United States government agency: *Provided*, The peanuts were not purchased by the foreign buyer for transfer to a United States agency.

(3) *Exportation of contract additional peanuts.* All contract additional peanuts which are not crushed domestically and which are eligible for export shall be exported to an eligible country as peanuts or peanut products.

(4) *Reentry transshipment and liquidated damages*—(i) *Reentry transshipment.* Peanuts and peanut products exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshipped to other than an eligible country in any form or product, and if they are reentered, the handler shall be subject to liquidated damages as specified in paragraph (j)(4)(ii) of this section.

(ii) *Liquidated damages.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, ten cents ($.10) per net pound for such peanuts or peanut products. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(iii) *Waiver or reduction of liquidated damages.* The liquidated damages specified in paragraph (j)(4)(iii) of this section may be reduced or waived if the Executive Vice President determines that such waiver or reduction will not impair the effective operation of the peanut price support program. Such reduction or waiver may contain such terms and conditions as the Executive Vice President determines to be appropriate and necessary for effectuating the purposes of the peanut price support program.

(5) *Evidence of export.* The handler shall furnish the association with the following documentary evidence of exportation of peanuts or peanut products not later than 30 days after the date of exportation as provided in § 1446.8(c)

(i) *Export by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed, on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Export by rail or truck* A copy of the bill of lading (showing the weight of the peanuts or peanut meal or products exported), supplemented by a copy of the Shipper's Export Declaration or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading according to this section.

(iii) *Export by air.* A copy of the Airway Bill (showing weight, of peanuts or peanut meal, or products exported, consignee and shipper) and other acceptable documentation acceptable to the association.

(iv) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee and the applicable Bureau license number of exportation has been made to one or more of the countries or areas for which a validated license is required under regulations issued by the Bureau of International Commerce, U.S. Department of Commerce.

(6) *Penalties.* Failure to dispose of contract additional peanuts acquired by a handler for domestic crushing or export by the final date for exportation, failure to obtain supervision from the association, or failure of proper handling of contract additional pea-

nuts by the handler shall constitute noncompliance with the provisions of this subpart. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on the quantity of the additional peanuts not crushed or exported, not supervised or properly handled, or such reduced penalty as provided in §§ 1446.8(d) and 1446.8(e).

[44 FR 33829, June 13, 1979, as amended at 45 FR 24444, Apr. 10, 1980; 46 FR 45114, Sept. 10, 1981; 47 FR 8554, Mar. 1, 1982]

§ 1446.10 Nonphysical supervision and handling of contractor additional peanuts.

The Association shall conduct onsite loadout supervision to ensure that all contract additional peanuts are identified and dollar value and screen sizes determined and such other supervision of domestic handling of contract additional peanuts to the extent necessary to ensure that such peanuts are exported or crushed in accordance with these regulations. By selecting the option of nonphysical supervision as provided in this section, the handler agrees that all of the handler's contract additional peanuts will be handled and accounted for under the provisions of this section.

(a) *Access of facilities.* The handler, by entering into contracts to receive contract additional peanuts, agrees that authorized representative(s) of CCC and the Association:

(1) May enter and remain upon any of the premises when such peanuts are loaded out, weighed, graded and sized as farmers stock contract additional peanuts.

(2) May, if determined necessary by CCC or the Association inspect the premises, facilities, operations, books, and records to determine that such peanuts have been handled in accordance with these regulations.

(3) May supervise the transition from positive lot shelled peanuts to the processing line of the manufacturing plants at which the peanuts will be made into peanut products when such peanuts or peanut products are to be exported as contract additional peanuts.

(4) May supervise and inspect nonedible quality peanuts crushed or exported for crushing.

(b) *Notifying the Association.* The handler (or cleaner, sheller, or processor under contract with the handler) shall notify the Association of the time when dollar value and screen size determinations will begin on farmers stock contract additional peanuts and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days advance notice to the Association so that supervision can be arranged.

(c) *Special sizing requirements.* The handler shall load out, weigh, grade, and account for all contract additional peanuts on a dollar value basis. A representative sample of peanuts loaded out as contract additional peanuts, from either commingled storaged or identity preserved storage, shall be taken by a Federal or State Inspector during the load out process when dollar value is being determined. The sample shall be graded and the kernels shall be sized to determine the percentages of kernels which ride specified screen sizes. The net weight of each screen size for such peanuts shall be determined by CCC or the Association and the handler shall be obligated to export or crush the determined quantities by screen size in addition to compliance requirements set forth in § 1446.8.

(d) *Furnishing irrevocable letters of credit.* Immediately after dollar value has been determined, the handler shall furnish the Association an irrevocable letter of credit in an amount equal to 120 percent of the quota support value for all contract additional peanuts loaded out. The handler shall not shell or otherwise process any contract additional peanuts until the Association notifies the handler that the letter of credit has been received and accepted. Such a letter of credit shall be issued in a form and by a bank acceptable to CCC. Credit may be given and the letter of credit reduced accordingly for an equivalent quantity of quota peanuts of the same crop, type, area and screen size which have been exported prior to the determination of a handler's contract additional export obligation. The handler shall deliver to the Association satisfactory evidence that such peanuts have been exported in accordance with these regulations. As contract additional peanuts are exported, the handler shall submit to the Association satisfactory documentation as required herein, and upon receipt of such documentation, the letter of credit will be reduced accordingly. Such evidence must be submitted not later than 30 days after the final date for exportation. If satisfactory evidence is not submitted by such date, the Association will draw against the letter of credit the full amount of the marketing penalty applicable to the quantity of peanuts which were not exported.

(e) *Processing.* Shelled peanuts which will be exported as contract additional peanuts, or quota peanuts which will be exported as replacements, shall be identified with positive lot identity tags and shall include shelled screen sizes applicable to the lot and recorded on the inspectors sizing worksheet. In order to be eligible for export credit, positive lot identity must be maintained except as authorized by the Association when peanuts are transported and stored domestically.

(f) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(g) *Advance to producer.* For each lot of peanuts delivered for loan, the association will make a price support advance to the producer in an amount equal to the support value of such peanuts, except that in addition to marketing quota penalties and the deductions specified in § 1446.12, the Association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law. In addition SWPGA may, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed $1 per net weight ton of peanuts upon which such advance was made, to be used in financing its peanut related activities outside the price support program.

(h) *Disposal of contract additional peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exportation to an eligible country as follows:

(1) All kernels may be crushed domestically; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically; or

(ii) Exported for crushing if peanuts are fragmented; or

(4) All of the peanuts may be exported as farmers stock peanuts; or

(5) Peanuts may be exported as peanut products if such peanuts meet edible export standards; or

(6) Peanuts may be exported as milled or inshell peanuts.

(i) *Ineligible peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.14, to be placed in the loan program shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan rate (whichever is applicable) for that type of peanuts exceeds the market price for such type for crushing, as determined by CCC. Such person shall pay such amount to CCC promptly upon demand.

The Executive Vice President, CCC, or his designee may reduce or waive the liquidated damages as otherwise provided for in this subsection based upon a consideration of the following factors: (1) Whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged for loan, (2) the degree of damage or potential damage to the price support program; (3) the nature and circumstances of the violation; (4) the extent of the violation; and (5) any other pertinent information.

(j) *Final dates for scheduling supervision.* Contract additional peanuts shall be scheduled for supervision by the Association during the normal marketing period but not later than July 31 following the calendar year in which the crop is grown unless prior approval of a later date is granted by the Association.

(k) *Export provisions*—(1) *General.* Exports to certain countries are regulated by U.S. Department of Commerce regulations and require a validated export license. Additional information concerning the regulations may be obtained from the Bureau of International Commerce or from the field office of the Department of Commerce.

(2) *Export to a U.S. Government agency.* Except for the export of raw peanuts to the military exchange services for processing outside the United States, export of peanuts in any form by or to a United States government agency shall not be considered exportation to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency for International Development are not considered sales to a United States government agency: *Provided,* The peanuts were not purchased by the foreign buyer for transfer to a United States agency.

(3) *Exportation of contract additional peanuts.* All contract additional peanuts which are not crushed domestically and which are eligible for export shall be exported to an eligible country as peanuts or peanut products.

(4) *Reentry transshipment and liquidated damages*—(i) *Reentry transshipment.* Peanuts and peanut products exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshipped to other than an eligible country, in any form or product, and if they are reentered, the handler shall be subject to liquidated damages as specified in paragraph (k)(4)(ii) of this section.

(ii) *Liquidated damages.* The handler, by entering into contracts to receive contract additional peanuts, agrees that CCC will incur serious and substantial damages to its program to support the price of quota peanuts if contract additional peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, ten cents ($.10) per net pound for such peanuts or peanut products. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshippment.

(iii) *Waiver or reduction of liquidated damages.* The liquidated damages specified in paragraph (k)(4)(ii) of this section may be reduced or waived if the Executive Vice President determines that such waiver or reduction will not impair the effective operation of the peanut price support program. Such reduction or waiver may contain such terms and conditions as the Executive Vice President determines to be appropriate and necessary for effectuating the purposes of the peanut price support program.

(5) *Evidence of export.* The handler shall furnish the Association with the following documentary evidence of exportation of peanuts or peanut products not later than 30 days after the date of exportation as provided in § 1446.8(c).

(i) *Export by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed, on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exported, and the country of destination. In addition, a copy of the FVQ-184 and a copy of the inspectors special sizing notesheet for each lot shall be furnished. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Export by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts, weight of the peanut meal, or products exported, supplemented by a copy of Shipper's Export Declaration or other documentation acceptable to the Association). In addition, a copy of the FVQ-184 and a copy of the inspectors special sizing notesheet for each lot shall be furnished. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(iii) *Export by air.* A copy of the Airway Bill (showing weight of peanuts, weight of peanut meal or products exported, consignee and shipper) and other documentation acceptable to the Association. In addition, a copy of the FVQ-184 and a copy of the inspectors special sizing notesheet shall be furnished.

(iv) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee and the applicable Bureau license number if exportations have been made to one or more of the countries or areas for which a validated license is required under regulations issued by the Bureau of International Commerce, U.S. Department of Commerce.

(6) *Penalties.* Failure to dispose of contract additional peanuts acquired by a handler for domestic crushing or export by the final date for exportation, failure to obtain supervision from the Association, or failure to properly handle contract additional peanuts by the handler shall constitute noncompliance with the provisions of this subpart. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on the quantity of the additional peanuts which have not been crushed, exported, supervised, and/or properly handled. Such penalty may be reduced as provided in §§ 1446.8(d) and 1446.8(e).

[46 FR 45114, Sept. 10, 1981, as amended at 46 FR 47762, Sept. 30, 1981; 47 FR 8554, Mar. 1, 1982]

WAREHOUSE STORAGE LOANS

§ 1446.11 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage loans to the associations specified in paragraph (b) of this section which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. The association shall establish an adequate system of records to identify each lot of peanuts delivered from producers as quota or additional peanuts and shall establish adequate records to identify whether such peanuts were pledged to CCC at the quota loan rate or additional loan rate. Such loans will mature on demand.

(b) *Associations and areas.* Price support advances will be available through:

(1) GFA Peanut Association, Camilla, Georgia, in the Southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern Peanut Growers Association, Gorman, Texas, in the Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Peanut Growers Cooperative Marketing Association, Franklin, Virginia, in the Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouses to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require warehousemen to examine the producer's marketing cards to determine price support eligibility and make entries on the marketing card as required by Part 729 of this title and record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts or contract additional peanuts are delivered, the balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of such warehouses may be obtained from the office of the appropriate association or from a State or county ASCS office. The associations shall pledge to CCC all peanuts upon which they have made price support advances as security for loans obtained pursuant to agreements with CCC.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge peanuts delivered to the association to CCC as collateral for a warehouse storage loan and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to producer.* For each lot of peanuts received, the associations will make a price support advance to the producer in an amount equal to the support value of such peanuts, except that, in addition to marketing quota penalties and the deductions specified in § 1446.12, the association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law, and the Southwestern Peanut Growers Association will, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed 50 cents per net weight ton of peanuts upon which such advance was made, to be used in payment for its peanut activities outside the price support program.

(h) *Fraud by producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a loan or an advance shall render him subject to criminal prosecution under Federal law. The producer shall be personally liable to CCC, aside from any additional liability under criminal or civil frauds statutes, for the amount of such advance and for all costs which CCC would not have incurred except for the producer's fraudulent representation, together with interest upon such amounts at the rate for fraudulent representation as shown in a separate notice in the FEDERAL REGISTER: *Provided,* That the producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

(i) *Ineligible peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.14, to enter the loan, shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan level for that type of peanuts exceeds the market price as determined by CCC and shall pay such amount to CCC promptly upon demand. The market price shall be based upon the estimated value for crushing stock.

[44 FR 33829, June 13, 1979. Redesignated at 46 FR 45114, Sept. 10, 1981]

§ 1446.12 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation or quality of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts not under contract. Net gains on peanuts in each pool shall be distributed to each grower in proportion to the value of peanuts placed in the pool by the grower except any distribution of net gains on additional pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer, and the proceeds available to any producer from any pool shall be reduced by the amount of any losses to CCC on peanuts transferred from an additional loan pool to a quota loan pool under the provisions of this subpart.

(a) *Quota pool.* Net gains from peanuts in the quota pool consist of:

(1) The net gains over and above the loan indebtedness on quota peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold into domestic food and related uses equal to the losses incurred on disposing of an equal quantity of quota peanuts of the same type and segregation in the same production area, considering sales of quota peanuts for export first and then as necessary, sales for crushing.

(b) *Additional pool.* Net gains for peanuts in the additional pool consist of:

(1) The net gains over and above the loan indebtedness on additional peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a grower, less

(2) An amount of the net gains on the additional pool allocated to the quota pool to offset any loss on that pool attributed to additional peanuts being used in domestic edible use.

[44 FR 33829, June 13, 1979. Redesignated at 46 FR 45114, Sept. 10, 1981]

§ 1446.13 Producer indebtedness.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilities or drying equipment are payable under the provisions of the note evidencing such loan and the amount due is recorded on the producer's marketing card, any amount due the producer under this subpart, after deduction of amounts due prior lienholders, shall be applied to such installment(s).

(b) *Producers listed on county debt record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amounts due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, Part 13 of this title.

[44 FR 33829, June 13, 1979. Redesignated at 46 FR 45114, Sept. 10, 1981]

§ 1446.14 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreage as required by Part 718 of this title shall be eligible for price support at the quota loan rate unless the late-filed report was accepted by the county ASC committee. In addition, no producer shall be eligible for price support at the quota loan rate if the producer has filed an erroneous report of crop or land use acreage unless: (1) The determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title, or (2) the county ASC committee determines that the producer acted in good faith in reporting crop or land use acreage.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or of a ward or of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustees shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements: (1) The right of majority has been conferred on such minor by court proceedings or by statute; (2) a guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had such minor been an adult.

[44 FR 33829, June 13, 1979. Redesignated at 46 FR 45114, Sept. 10, 1981, and amended at 46 FR 47762, Sept. 30, 1981]

§ 1446.15 Eligible peanuts.

Eligible peanuts shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer.

(a) *Quota support.* Peanuts eligible for quota support are peanuts which (1) are segregation 1 peanuts; and (2) contain not more than 10 percent moisture and which, if mechanically dried, contain at least 6 percent moisture; and (3) contain not more than 10 percent foreign material; (4) are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and (5) the beneficial interest is in the producer who delivers them to the association and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC; (6) are, if delivered to the association in bags in the Southwestern area, in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity; (7) must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; (8) must have been produced on a farm on which the effective farm allotment has not been knowingly exceeded; and (9) must have been inspected as farmer stock peanuts and have an official grade determined by an inspector.

(b) *Additional support.* Peanuts eligible for additional support are peanuts which meet the following requirements. The peanuts:

(1) Must contain not more than 10 percent moisture;

(2) Must contain not more than 10 percent foreign material, except that such peanuts may contain more foreign material if the handler agrees to purchase such peanuts for domestic edible use as provided in the first sentence of § 1446.7 of these regulations;

(3) If graded Segregation 2 or 3 and contain more than 10 percent moisture and/or foreign material must meet the following criteria: (i) The level of moisture does not exceed a level determined appropriate by the Association; (ii) short term temporary storage is available in the area, as determined by the Association; (iii) the local crushing market for peanuts can crush the peanuts within a reasonable time, as determined by the Association; and (iv) the producer has made a bona fide effort, as determined by the Association, to clean and dry such peanuts prior to offering for loan;

(4) Must be free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained;

(5) If delivered to the Association in bags in the Southwestern area, must be in new or thoroughly cleaned used

bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, which are free from holes, which are finished at the top with either the selvage edge of the material, binding, or a hem, and which are uniform in size with approximately 2 bushel capacity;

(6) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(7) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

In addition to the above requirements, the beneficial interest in the peanuts must be in the producer who delivers them to the Association and must always have been in such producer or a former producer whom such producer succeeded before the peanuts were harvested. In order to meet the requirements of succession, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not consitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the appropriate county Agricultural Stablization and Conservation (ASC) committee all pertinent information which will permit a determination with respect to succession to be made by CCC. Also, if the peanuts are produced on acreage in excess of the effective farm allotment, the marketing penalty with respect to such peanuts must have been collected in accordance with Part 729 of this title.

[44 FR 33829, June 13, 1979. Redesignated and amended at 46 FR 45114, Sept. 10, 1981]

§ 1446.16 Disposition and liquidated damages on segregation 3 peanuts.

(a) Any producer who has a lot of farmers stock peanuts classified by the inspector as segregation 3 peanuts shall (1) deliver the peanuts to the association for loan at the additional loan rate, (2) deliver such lot as contract additional peanuts under the provisions of § 1446.5, (3) sell as quota peanuts to a handler who is a signer of the peanut marketing agreement or (4) retain the lot for seed. If the producer does not dispose of or market such peanuts as provided above on the day of inspection, such producer shall be ineligible for continued quota price support for the rest of the marketing year on all peanuts at the close of business on the day of the inspection. If the producer elects to retain a lot for seed, he shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the MQ-94 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts for crushing as quota peanuts without benefit of price support.

(b) *Liquidated damages.* The producer, by participating in the loan program, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to support the price of peanuts if segregation 3 peanuts are disposed of other than in accordance with the provisions of paragraph (a) of this section; that the amount of such damage will be difficult, if not impossible, to ascertain exactly; and that the producer shall, with respect to any lot of peanuts ineligible for quota support which are placed under quota loan or any lot of peanuts which are placed under quota loan by a producer after he has disposed of any lot of segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, pay to CCC as liquidated damages and not as a penalty, seven cents ($.07) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.11 relating to the producer's liability (Aside from liability under criminal and civil frauds statutes) shall not be applicable to such peanuts.

[44 FR 33829, June 13, 1979. Redesignated at 46 FR 45114, Sept. 10, 1981]

§ 1446.17 Producer transfers of additional loan stocks to quota pools.

Producers may transfer Segregation 2 and 3 additional loan stocks to quota loan after the producer has completed marketing and returned his marketing card to the county office not to exceed the smaller of the farm poundage quota minus the production of segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: *Provided:* That the proceeds available to such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers eligible to transfer additional loan peanuts to the quota loan in accordance with this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketing of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer may indicate to the county office the net weight and applicable Form MQ-94 numbers for the peanuts to be transferred. Such pounds shall be considered as quota peanuts marketed, the applicable MQ-94's recomputed at the quota loan level, and the producer advanced the difference between the additional and quota support.

[44 FR 33829, June 13, 1979; 48 FR 17332, Apr. 22, 1983]

Subpart—General Regulations Governing 1982 Through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108A, 401, 63 Stat. 1051, as amended, (95 Stat. 1254, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1445c-1, 1421); secs. 359, 375, 52 Stat. 31, as amended, 64, as amended (7 U.S.C. 1359, 1375), unless otherwise noted.

SOURCE: 48 FR 21536, May 13, 1983, unless otherwise noted.

GENERAL

§ 1446.50 General statement.

(a) *Scope.* This subpart sets forth the terms and conditions under which producers and handlers may trade in the 1982 through 1985 crops of peanuts. This subpart also sets forth the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1982 through 1985 crops of farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts are considered additional peanuts and shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged as collateral for price support loans under the terms of this subpart. Annual notice of determinations will specify support rates, and, where necessary, supplements to this subpart will specify other terms and conditions not contained in this subpart. Specific terms and conditions relating to contracts for sales of peanuts under loan will be set out in announcements issued by the Commodity Credit Corporation (CCC).

(b) *Price support advances.* Producers may obtain price support at the rates specified in the applicable annual Notice of Determination through the applicable association. Each association will make appropriate price support loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loans will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations setting forth the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers for any crop of farmers stock peanuts will be published separately in the FEDERAL REGISTER.

§ 1446.51 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, the Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or waive any of the provisions of this subpart or any amendment or supplement thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee, from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.52 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have the meanings herein assigned to them by this section unless the context or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The price support rate applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States, within the Department of Agriculture.

(f) *Compliance regulations.* The regulations in Part 718 of this title, issued by the Administrator, ASCS, and effective for the applicable crop.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with § 1446.54.

(h) *County committee.* The body of persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation (ASC) county and community committees in Part 7 of subtitle A of this title of the Code of Federal Regulations, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the county committee. For other areas without a regular county committee available for handling such matters as would normally fall to a county committee, the functions of the county committee shall be performed by the Deputy Administrator for State and County Operations or the person or body to whom such functions shall be delegated by the Deputy Administrator.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Crushing.* The processing of peanuts: (1) To extract oil for food uses and meal for feed uses; or (2) into flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses.

(k) *Domestic edible use.* Domestic edible use means, for the purpose of regulations found in this subpart: (1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes for traditional domestic edible uses); (2) use of peanuts for seed, exluding unique strains which are not commercially available and which are used for the production of green peanuts; and (3) use of peanuts on a farm.

(l) *Edible export standard for contract additional peanuts.* Raw shelled or inshell peanuts of any crop exported for human consumption meeting such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop set forth in the Marketing Agreement for Peanuts No. 146: *Provided,* That peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the association that such deviations are: (1) Acceptable to the export buyer, and (2) fall within the range of deviations allowable under the Marketing Agreement.

(m) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the poundage quota and marketing regulations, Part 729 of this title.

(n) *Eligible country.* Any destination outside the United States, except that, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

(o) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States and for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the association or CCC, or, upon request by the association or CCC, for which a consignee receipt is made available to the association or CCC.

(p) *Extra large kernels.* Shelled Virginia type peanuts which are "whole" and free from "foreign material", "damage", and "minor defects" as such terms are defined in the U.S. Standards for shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 20/64 by 1 inch openings.

(q) *Farm.* A farm, as defined in Part 719 of this title.

(r) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(s) *Flaked peanuts.* Raw contract additional peanuts which are colloid milled (finely ground), stabilized to prevent rancidity, and drum dried into flake form. Flaked peanuts, to be considered as peanuts used for crushing under these rules, may only be used in approved products or uses, those being the processing of flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses. Products approved for use include, but are not limited to, bases for meat and cheese flavored sandwich spreads, meat analogs, extenders for certain types of luncheon meats, extenders for scrambled eggs, and other products as approved by CCC or the association.

(t) *Form ASCS-1007 and Form FV-95*—(1) *Form ASCS-1007.* The Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FV-95.* The Federal-State Inspection Service Peanut Inspection Notesheet.

(u) *Fragmented peanuts.* Peanuts qualifying as fragmented peanuts under the definitions contained in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) which are applicable for the crop year in which the peanuts were produced.

(v) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(w) *Handler.* Any person or firm, or subdivision thereof, registered with ASCS for the purpose of acquiring peanuts for resale, domestic consumption, exportation, or crushing, through a business of buying and selling peanuts.

(x) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(y) *Loan value.* The amount of the price support loan advance which may be obtained by a producer from the association under this subpart with respect to a lot of eligible farmers stock peanuts, computed for quota or additional peanuts, as applicable, on the basis of weight, quality, and the support values announced for such type.

(z) *Lot.* That quantity of farmers stock peanuts for which one ASCS-1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the association for a price support loan advance, a lot shall consist of not more than the contents of one vehicle, or two or more vehicles containing a total of approximately 24,000 pounds.

(aa) *Marketing card.* Form ASCS-1002 issued each year in accordance with Part 729 of this title by ASCS county offices to producers for use in marketing peanuts of the applicable crop. Each Form ASCS-1002 shall indicate: (1) The farm operator's eligibility for quota price support; (2) the pounds that may be marketed as quota peanuts; (3) the pounds of additional peanuts contracted and the handler number of the contracting handler; and (4) the eligibility of additional peanuts for immediate buyback.

(bb) *Marketing penalties.* The penalties prescribed in the poundage quota and marketing regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations and are effective for the applicable crop.

(cc) *Marketing regulations.* Regulations in Part 729 of this title, effective for the applicable crop.

(dd) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(ee) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts: (1) Foreign material; and (2) moisture in excess of 7 percent.

(ff) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(gg) *Peanut products.* Any products, other than peanut oil and meal, manufactured or derived from peanuts such as, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted shelled or inshell peanuts, and peanut granules.

(hh) *Peanut receiving and warehouse contract.* Form CCC-1028 (Identity Preserved), Form CCC-1028-A (Commingled Storage), or any other form approved by CCC for the purpose of receiving and warehousing peanuts.

(ii) *Peanut segregations*—(1) *Segregation 1.* Farmers stock peanuts which: (i) Have at least 99 percent peanuts of one type; (ii) have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage; (iii) are free from any offensive odor; and (iv) are free from visible Aspergillus flavus mold.

(2) *Segregation 2.* Farmers stock peanuts which are free from visible Aspergillus flavus mold and which either: (i) Have less than 99 percent peanuts of one type; or (ii) have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage; or (iii) have an offensive odor. However, if such peanuts are placed under additional loan and purchased under the immediate buyback procedure, as pro-

vided in § 1446.56(a) of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold. However, if such peanuts are placed under additional loan and purchased under the immediate buy-back procedure as provided in § 1446.56(a), such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(jj) *Pools.* Accounting pools established by the association and for which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(kk) *Quota peanuts.* For purposes of the regulations found in this subpart, peanuts which are: (1) Eligible for domestic edible uses; and (2) marketed or considered marketed from a farm as quota peanuts, but not in excess of the farm poundage quota.

(ll) *Quota support rate.* The price support rate applicable to quota peanuts.

(mm) *Raw peanuts.* Inshell peanuts, shelled peanuts, pressed peanuts, blanched peanuts or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

(nn) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner type: $^{16}/_{64}$ x ¾ inch slot;
Spanish type: $^{15}/_{64}$ x ¾ inch slot;
Virginia type: $^{15}/_{64}$ x 1 inch slot.

(oo) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as defined in the poundage quota and marketing regulations, Part 729 of this title.

(pp) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(qq) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(rr) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent shells damaged by: (1) Discoloration; (2) cracks or broken ends; or (3) both discoloration, and cracks or broken ends.

[48 FR 21536, May 13, 1983, as amended by Amdt. 2, 49 FR 37731, Sept. 26, 1984; Amdt. 2, 50 FR 50282, Dec. 10, 1985]

HANDLER OPERATIONS

§ 1446.53 Handler responsibilities.

(a) *Examination of producers' marketing cards.* All handlers shall examine producers' marketing cards and record each purchase or delivery of peanuts as required in Part 729 of this title and in accordance with procedures established by ASCS. Any peanuts delivered by producers under an additional peanut contract (Form CCC-1005) in excess of the provisions of such contract shall be considered as having been marketed as quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at the time of delivery.

(b) *Purchase records*—(1) *Purchases of quota peanuts on which an ASCS-1007 is prepared.* Each handler shall maintain records of the peanuts purchased and sold. The records shall contain, at a minimum, the following information: (i) The State and county code; (ii) the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler; (iii) the quantity and type of peanuts; (iv) the date of purchase; and (v) the applicable ASCS-1007 serial number. The handler shall imprint forms ASCS-1007 and FV-95 with the farm identification card, the peanut buyer's card, and the buying point card.

(2) *Purchases of quota peanuts from producers on which an ASCS-1007 is not prepared.* The handler shall immediately transmit a record of such pur-

chase to CCC. Such record shall show the name and address of the producer, State and county code, farm number, the handler's name, address and registration number, buying point, any marketing penalty collected, the type and quantity of peanuts purchased, and the date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained by a handler in such a manner that will enable the association or CCC, ASCS, or any other representative of the Secretary to readily reconcile the quantities, grades, and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in such a manner that the association or CCC, ASCS, or any other representative of the Secretary can readily determine whether there has been compliance with the provisions of this subpart.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.54 Contracts for additional peanuts for crushing and exportation.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers to buy additional peanuts from producers for crushing or exportation, or both: *Provided however,* That producers approved as producer-handlers under Part 1421 of this title, for the purpose of immediate buyback of their additional peanuts, may not contract with them selves. All contracts for sales of additional peanuts shall be completed and submitted to the county office for approval prior to April 15 of the year in which the crop is produced. Such contracts cannot be sold or traded, except under the terms and conditions specified in paragraph (b) of this section. Contracts, in order to be approved by the county committee, shall include at least the following:

(1) The name and address of the producer;

(2) The State and County code of the State and County in which the additional peanuts are to be produced;

(3) The name, and address of the handler, and registration number;

(4) The amount of Segregation 1, Segregation 2, or Segregation 3 peanuts in pounds;

(5) The contract price shown as a percentage of the quota peanut support rate;

(6) The signature of the producer; and,

(7) The signature of the handler or authorized agent of the handler.

(b) *Contract transfers and delivery of contracted peanuts to other handlers.* If a handler is unable to perform under contracts with producers for the purchase of additional peanuts because of conditions beyond the handler's control, including but not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities, the handler and the producer may agree to the delivery of the peanuts to other handlers under the terms of the original contract or under modified terms. Such transfers shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(c) *Contract transfers and transfer of delivery obligations to other producers.* If a producer is unable to fully perform under the terms of a contract with a handler for the purchase of additional peanuts because of conditions beyond the producer's control including, but not limited to, farm reconstitutions (combinations and divisions), insolvency, bankruptcy or death, the handler and the producer or his successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or modified terms: *Provided how-*

ever, That where there is a substitution of another producer, the original contract price and quantity provided for in the contract may not be changed. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such modifications or transfers will not impair the effective operation of the peanut program. Contract modifications other than changes in producer, owner, or operator, may be approved by the county ASCS office in accordance with instructions issued by ASCS.

(d) *Contracts between handlers.* Handlers may contract with other handlers to transfer liability for exporting or crushing contract additional peanuts. Such contracts must contain the following agreement:

> I agree that I will either export or crush the peanuts delivered under this contract as provided in Part 1446, Subpart-General Regulations Governing 1982 through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations, as amended, by August 31 following the calendar year in which the crop is grown, except that if the final date for export or crushing is extended by the Commodity Credit Corporation to November 30 of that year, I agree to dispose of such peanuts by November 30 of that year, and that, upon my failure to do so, I shall be subject to a marketing quota penalty as specified in such regulations on all such peanuts which have not been so crushed or exported. I further agree that if I contract with another Handler to market any such peanuts, I shall include as part of the contract the agreement contained herein, and upon my failure to do so, I may be subject to a marketing quota penalty, as specified in the regulations on all such peanuts.

(e) *Inspection of contract additional peanuts.* The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by an inspector when such peanuts are delivered by a producer.

(f) *Contracts for 1982 crop additional peanuts.* Contracts between producers and handlers for 1982 crop additional peanuts entered into prior to April 15, 1982, and meeting the requirements of the regulations then in effect (Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, 7 CFR Part 1446), shall be considered as having met the requirements for such contracts which are set forth in this subpart. However, such contracts and the peanuts which are the subject of such contracts shall otherwise be governed by the terms and conditions set forth in this subpart. All references contained in such contracts to the General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, or portions thereof, shall be deemed to be references to this subpart.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108A, 401 *et seq.*, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445c-1, 1421 *et seq.*); sec. 359, 375, 52 Stat. 31, 64, as amended (7 U.S.C. 1359, 1375))

[48 FR 21536, May 13, 1983, as amended at 48 FR 54809, Dec. 7, 1983; 48 FR 56570, Dec. 22, 1983; 49 FR 29771, July 24, 1984]

§ 1446.55 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practices and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date and place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar-value-out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.56 Use of additional peanuts as domestic edible peanuts.

(a) *"Immediate buyback" purchase.* During harvest season, a handler shall have the right to purchase additional peanuts from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus handling charges. The purchase (i.e., the "immediate buyback" purchase) may be made only from the association and only on the date such peanuts were delivered by the producer as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by the association only if the marketing card (ASCS-1002) is stamped "eligible for buyback". The handler shall: (1) As an agent for the association, advance to the producer price support from CCC funds for the peanuts at the additional loan rate; (2) pay to the producer from his own funds any agreed premiums for the delivery of such peanuts by the producer to the handler; and (3) forward to the association a check payable from his own funds to CCC for the peanuts in an amount equal to the quota loan value of the peanuts, as well as any handling charges. The check and applicable ASCS-1007 will identify the peanuts as additional peanuts that may be used for domestic edible use and those documents must be transmitted to the association (as evidenced by a postmark) not later than the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. Such receipts will be credited to the additional loan pool for such peanuts.

(b) *Purchases of quota and additional peanuts subsequent to delivery.* Handlers may also purchase quota or additional peanuts for the loan pool for domestic edible use after delivery by producers to the association, under terms and conditions established by the association and CCC. The minimum price for such purchases shall be the applicable carrying charges plus: (1) Not less than 105 percent of the quota loan value of the peanuts if paid for not later than December 31 of the marketing year; or (2) not less than 107 percent of the quota loan value if paid for after December 31 of the marketing year.

§ 1446.57 Compliance requirements for handlers of contract additional peanuts.

(a) *Records.* All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or exportation to an eligible country in accordance with the conditions set forth in this subpart. All handler's records shall be subject to a review by the association, CCC, ASCS, or other representatives of the Secretary of Agriculture to determine compliance with the provisions of this subpart. Refusal to make such handler's records available to the association, CCC, ASCS, or other representative of the Secretary or the failure of such records to establish such disposition by the handler shall constitute prima facie evidence of noncompliance with this subpart for which a penalty may be assessed against the handler in accordance with § 1446.59. Reviews of handler records shall be made by the association in accordance with guidelines established by CCC.

(b) *Excess marketings of quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of quota farmers stock peanuts purchased by the handler during the applicable marketing year and those purchased in accordance with the provisions of § 1446.56, regardless of whether additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold, except that such penalty may be reduced in appropriate circumstances under the terms set forth in § 1446.59, which also prescribes the manner in which penalties will be assessed.

(c) *Marketing in the U.S. of peanut products made from contract additional peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that the handler marketed in the United States, including its territories and possessions and the District of Columbia, any peanut products made from any crop of contract additional peanuts. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate with respect to that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the quantity of peanut products imported and sold, except that such penalties may be reduced in appropriate circumstances under the terms set forth in § 1446.59, which also prescribes the manner in which penalties will be assessed.

(d) *Storage requirements for contract additional peanuts prior to processing*—(1) *Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan, and contract additional peanuts. In such case, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage, except when such peanuts are purchased from the association for domestic edible use on an in-grade, in-weight basis. Contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar-value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value of the peanuts for Virginia-type peanuts and 3.5 percent for all other peanut types. However, if such additional contract peanuts are graded out and accounted for prior to February 1 of the year following the year in which the peanuts were grown, the adjustment of the dollar value for shinkage shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts.

(2) *Identity preserved storage.* Contract additional peanuts stored "identity preserved" shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices and instructions provided by CCC.

(3) *Penalties.* Failure to store and account for peanuts in accordance with the requirements of this paragraph shall constitute noncompliance with this subpart for which a penalty may be assessed in accordance with § 1446.59.

(e) *Disposition of contract additional peanuts*—(1) *Disposition.* Handlers shall dispose of all contract additional peanuts, either by exportation, crushing, or substitution, in accordance with the requirements and procedures of § 1446.58.

(2) *Final disposition date.* Handlers shall dispose of all contract additional peanuts by August 31 of the year following the calendar year in which the crop was grown.

(3) *Extension of final disposition date.* The final disposition date shall be extended to November 30 of the year following the calendar year in which the crop was grown if, by August 31, the handler:

(i) Furnishes information to the association showing that the contract additional peanuts have been milled and positive lot identified;

(ii) Furnishes the association with the name and location of the contract additional peanuts; and

(iii) Provides a written statement to the association agreeing to pay for any supervision costs which are incurred with respect to contract additional peanuts after August 31.

(4) *Disposition following an extension.* The identical contract additional peanuts with respect to which a request for extension of the final disposition date has been granted by the association or CCC must be disposed of by exportation or crushing in conformity with the requirements of § 1446.58. Such contract additional peanuts may not be disposed of through the substitution procedures set forth in § 1446.58(d).

(5) *Penalties.* The failure of a handler to dispose of contract additional peanuts by the final date for disposition in accordance with the requirements of this subpart shall constitute noncompliance with the provisions of

this subpart for which a penalty may be assessed against the handler in accordance with the provisions of § 1446.59.

§ 1446.58 Supervision and handling of contract additional peanuts.

The handler must arrange for and the association will conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(a) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts or any person or firm otherwise receiving contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into flaked peanuts or other products, or otherwise handled.

(2) May inspect such peanuts and the oil, meal, and other products thereof; and

(3) May inspect the premises, facilites, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this subpart.

(b) *Notifying the association.* Before moving or processing any contract additional peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, processing into peanut flakes, or processing into peanut products to be exported. Except as otherwise authorized by the association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identity.

(d) *Substitution of quota and additional peanuts*—(1) *Substitution of quota peanuts which have been exported*—(i) *Farmers stock peanuts.* The identical contract additional farmers stock peanuts shall be handled in accordance with the provisions of this section, except that with prior notification to and approval of the association, farmers stock quota peanuts of the same crop, type, quality, and area may be exported in place of such additional peanuts.

(ii) *Milled peanuts.* The identical contract additional milled peanuts shelled under supervision of the association shall be disposed of in accordance with this section, except that with prior notification to and approval by the association, such peanuts may be used to replace, in domestic edible use, quota peanuts of the same crop, type, area, and screen size, which have been previously exported. The quota peanuts exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts.

(2) *Use of additional peanuts for domestic edible uses prior to substitution.* Additional peanuts may be used for domestic edible use with prior notification and approval of the association and upon presentation to the association of an irrevocable letter of credit in an amount which is not less than 120 percent of the quota support rate for any portion of the lot for

which substitution has not been approved in accordance with paragraph (d)(1) of this section. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC. The handler shall subsequently deliver to the association satisfactory evidence that a like amount of quota peanuts of appropriate screen sizes have been handled as contract additional peanuts and exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after the final date for export as established in §1446.57(e)(2) or § 1446.57(e)(3), or 15 days prior to the expiration of the letter of credit, whichever occurs first. If satisfactory evidence is not presented by such date, CCC may authorize the association to draw against the letter of credit the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this subpart.

(3) *Time limitations.* Substitution may not be requested or approved with respect to contract additional peanuts for which the final disposition date has been extended in accordance with § 1446.57(e)(3).

(4) *Screen size variation tolerance*—(i) *Screen size variation tolerance and substitution.* For eligible screen sizes, a variation tolerance will be permitted in order to satisfy the substitution requirements for milled peanuts of identical screen size as set forth in paragraphs (d) (1)(ii) and (d) (2) of this section, if: (A) The export credits earned from the exportation of whole kernel quota peanuts are equal to or exceed the total obligation for export of whole kernels from contract additional peanuts; and (B) for eligible whole kernel screen sizes listed in paragraph (d)(4)(ii) of this section, the quantity of export obligation is greater than the export credits by an amount not exceeding 1 percent of the export obligation for that screen size. If the requirements of the preceding paragraphs (d)(4)(i) (A) and (B) of this section are satisfied, excess export credits for peanuts of one or more larger screen sizes may be applied, to the extent available, to offset shortages in a smaller screen sizes for which a tolerance is permitted in paragraph (d)(4)(ii) of this section.

(ii) *Screen size variation tolerance and eligible screen sizes.* Screen size variation and offset of export obligations with excess export credits as provided in paragraph (d)(4)(i) of this section shall be applicable only for the whole kernels that will ride the following slotted screen size openings by type:

Spanish type: 18/64 x 3/4 inch (+18), or 15/64 x 3/4 inch (+15)
Runner type: 18/64 x 3/4 inch (+18), or 16/64 x 3/4 inch (+16)
Virginia type: 18/64 x 1 inch (+18), or 15/64 x 1 inch (+15).

(iii) *Screen size variation tolerance and letter of credit.* For the purpose of establishing a letter of credit for contract additional peanuts used in the domestic market under paragraph (d)(2) of this section, allowances for screen size variation shall not be considered in determining the dollar amount of the letter of credit.

(iv) *Screen size variation tolerance and penalties.* Should the export obligation exceed the export credits for an eligible screen size listed in paragraph (d)(4)(ii) of this section by an amount greater than 1 percent of the export obligation for that screen size, the handler shall be liable for a failure to export under the provisions of § 1446.59 and the penalty shall be calculated on the total quantities involved in the violation without adjustment for screen size variation tolerances.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(f) *Domestic sale or transfer of contract additional peanuts*—(1) *Farmers stock peanuts.* The handler must submit contracts (CCC-1006) covering any domestic sale, transfer, or other disposition of farmers stock contract additional peanuts to the association for written approval. Such approval must be obtained prior to any physical movement of the peanuts by the handler from the buying point. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees in writing to handle and crush (including processing into flakes in those instances where such processing may be considered as crushing under § 1446.52(s)) or export the contract additional peanuts as raw peanuts or peanut products in accordance with the terms and conditions of this subpart. Approval of such contracts may be made before or after delivery of the peanuts to the handler by the producer.

(2) *Milled peanuts.* The handler must submit contracts (CCC-1006) covering any domestic sale, transfer, or other disposition of milled contract additional peanuts to the association for written approval. Approval must be obtained prior to any physical movement of the peanuts by the handler. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush (includes processing into flakes if approved by the association or CCC) or export the contract additional peanuts in accordance with the terms and conditions of this subpart.

(g) *Disposal of contract additional peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exportation to an eligible country as follows:

(1) All kernels may be crushed domestically; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels: (i) Crushed domestically, or (ii) exported for crushing, if fragmented; or

(4) All of the peanuts may be exported as farmers stock peanuts; or

(5) The peanuts may be exported to an eligible country as peanut products if such peanuts meet edible export standards; or

(6) The peanuts may be processed into peanut flakes for those domestic uses approved by CCC or the Association to be considered as a crushing use under the terms of § 1446.52(s) if such peanuts meet domestic edible quality standards; or

(7) The peanuts may be exported as milled or inshell peanuts.

(h) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon of the following statement:

"This shipment consists of lots of meal which contains aflatoxin ranging from —— to —— PPB and averaging —— PPB."

(i) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for supervision by the Association during the normal marketing period but not later than July 31 of the calendar year following the calendar year in which the crop was grown, unless prior approval of a later date has been made by the association.

(j) *Exportation provisions*—(1) *Exportation to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services for processing outside the United States, the exportation of peanuts in any form by or to a United States Government agency shall not be considered as exportation to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to a United States agency.

(2) *Exportation of contract additional peanuts*—All contract additional peanuts which are not crushed domestically (including approved processing into flakes) and which are eligible for exportation shall be exported in accordance with the provisions of this subpart to an eligible country as peanuts or peanut products.

(3) *Reentry transshipment and liquidated damages*—(i) *Reentry transshipment.* Additional peanuts and peanut products made from such peanuts which have been exported shall not be

reentered by anyone into the United States in any form or product and shall not be caused by a handler to be diverted or transshipped to other than an eligible country in any form or product. If contract additional peanuts or peanut products made from such peanuts are reentered into the United States, the handler shall, except in cases where the handler's liability is transferred under a valid good-faith transfer executed in accordance with the regulations of this part, be liable for liquidated damages as specified in paragraph (j)(3)(ii) of this section. Liability for liquidated damages arising out of purchases of loan additional peanuts (peanuts purchased from inventories of additional peanuts pledged as price support loan collateral) are governed by the terms of announcements issued by CCC describing the terms and conditions of such sales.

(ii) *Liquidated damages.* Any handler receiving contract additional peanuts shall be deemed to have agreed that: CCC may incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts or products made from such peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; the amount of such damages will be difficult, it not impossible, to ascertain exactly; and, with respect to any such peanuts or the products of such peanuts which are reentered into the United States or diverted to or transshipped to other than an eligible country, such handler shall pay to CCC, as liquidated damages and not as a penalty, the amount by which the national quota support rate for the applicable crop year exceeds the national additional peanut support rate, for that year on a per pound basis for each pound of peanuts or peanut products reentered. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(iii) *Waiver or reduction of liquidated damages.* The liquidated damages specified in paragraph (j)(3)(ii) of this section may be reduced or waived if the Executive Vice President of CCC, or his designee, determines that such waiver or reduction will not impair the effective operation of the peanut price support program. Such reduction or waiver may contain such terms and conditions as the Executive Vice President of CCC or his designee determines to be appropriate and necessary for effectuating the purposes of the peanut price support program.

(4) *Evidence of exportation.* The handler shall furnish the association or CCC with the following documentary evidence of exportation of peanuts or peanut products not later than 30 days after the final disposition date provided in § 1446.57(e):

(i) *Exportation by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Exportation by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts or peanut meal or products exported), supplemented by a copy of the Shipper's Export Declaration or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(iii) *Exportation by air.* A copy of the Airway Bill (showing the weight of the peanuts, peanut meal, or peanut products exported, the consignee and shipper) and other documentation acceptable to the association.

(iv) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee or, upon request by the association or CCC, a copy of the consignee receipt.

(k) *Penalties.* Failure to obtain required supervision from the association, or failure to handle and dispose of contract additional peanuts in accordance with the provisions of this section, shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed in accordance with § 1446.59.

[48 FR 21536, May 13, 1983, as amended by Amdt. 2, 49 FR 37731, Sept. 26, 1984; 49 FR 45109, Nov. 15, 1984; Amdt. 2, 50 FR 50282, Dec. 10, 1985]

§ 1446.59 Assessment of penalties and liquidated damages against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty provisions of this subpart for any or all of the following violations:

(1) Failure to keep or make available records in accordance with § 1446.57(a);

(2) Excess marketings of quota peanuts, as set forth in § 1446.57(b), including any marketing of imported peanut products made from contract additional peanuts as set forth in § 1446.57(c) or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts;

(3) Failure to store and account for contract additional peanuts in accordance with the requirements of § 1446.57(d);

(4) Failure to dispose of contract additional peanuts in accordance with this subpart by the final disposition date in accordance with § 1446.57(e); or

(5) Failure to obtain supervision of or to handle contract additional peanuts as required by § 1446.58.

(b) *Liquidated damages.* The liability for, and the amount of liquidated damages shall be determined in accordance with § 1446.58(j)(3).

(c) *Penalty rate and amount.* The penalty rate shall be equal to 120 percent of the basic quota support rate for the applicable crop year for the type of peanuts involved in the violation for which the penalty is being assessed. The amount of the penalty shall be equal to the penalty rate times the quantity of peanuts: (1) For which records have not been properly kept or made available; (2) marketed as excess quota marketings; (3) not properly stored; (4) not properly disposed of; (5) not properly supervised or handled; or (6) determined by CCC to have been necessary to produce the quantity of peanut products made from contract additional peanuts imported and sold in the United States.

(d) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty or liquidated damages by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty or liquidated damages, and shall advise the handler of the handler's appeal rights under this subpart.

(e) *Appeals.* A handler who is dissatisfied with the penalties or liquidated damages assessed by the CCC contracting officer may file a written request for reconsideration of the assessment with the CCC contracting officer. Such request must be made no later than 15 days after the handler receives the notice of assessment. If the handler is dissatisfied with the determination, the handler may appeal such determination by submitting a written notice of appeal to the Executive Vice President of CCC, within 15 days of the issuance of a determination of reconsideration by the contracting officer. Except as otherwise provided herein, such appeal shall be conducted in accordance with the appeal regulations set forth in Part 780 of this title.

(f) *Request for reductions of penalties or liquidated damages*—(1) *Form of request.* A handler may request a reduction in the amount of the penalties or liquidated damages which have been assessed. Such a request shall be treated as an appeal under paragraph (e) of this section, and must comply with the requirements of that section. The handler may simultaneously contest liability for the penalty or liquidated damages and, in the alternative, request that the penalty or liquidated damages be reduced.

(2) *Reduction criteria*—(i) *Liquidated damages.* The criteria for reducing liquidated damages shall be those which are set forth in § 1446.58(j)(3)(iii).

(ii) *Penalties.* A penalty may be reduced if the Executive Vice President of CCC or his designee, determines that the violation for which the penalty was assessed was done unintentionally or unknowingly by the handler and that a reduction in the amount of the penalty would not impair the effective operation of the price support program for peanuts. The provisions of this paragraph shall be applicable only to handlers who made a good faith effort to comply fully with the terms and conditions of the program.

(3) *Limitations.* The amount of a penalty may not be reduced to less than an amount which is equal to 40 percent of the basic quota support rate for the applicable crop year times the quantity of peanuts involved in the violation. There shall be no limitation on the amount by which an assessment of liquidated damages may be reduced.

WAREHOUSE STORAGE LOANS

§ 1446.60 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage price support loans to the associations specified in paragraph (b) of this section which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. Such loans will mature on demand.

(b) *Associations and areas.* Price support advances will be available through:

(1) The GFA Peanut Association of Camilla, Georgia, for the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) The Southwestern Peanut Growers Association of Gorman, Texas, for the Southwestern area consisting of all other territories and possessions of the United States not listed in paragraphs (b)(1) or (b)(3) of this section, and the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming;

(3) The Peanut Growers Cooperative Marketing Association of Franklin, Virginia, for the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouseman to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require Warehousemen to: (1) Examine the producers' marketing cards to determine price support eligibility; (2) make entries on the marketing card as required by Part 729 of this title; and (3) record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts or contract additional peanuts are delivered, the balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of such warehouses may be obtained from the office of the appropriate association or from State or county ASCS offices.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge the peanuts delivered to the association by the producer to CCC as collateral for a warehouse storage loan and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to the producer.* For each lot of peanuts delivered, the association will make a price support advance to the producer in an amount equal to the support value of such peanuts in accordance with procedures established by CCC. However, in addition to marketing quota penalties and the deductions specified in § 1446.62, any assessments or excise taxes imposed by State law will be deducted from such advances and paid to the proper State authorities. In addition, the Southwestern Peanut Growers Association may, upon the prior agreement of the producer, deduct from such advance an amount which is approved by CCC, not to exceed $1 per net weight ton of peanuts upon which such advance was made, and which is to be used in financing its peanut related activities outside the price support program.

(h) *Fraud by the producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a price support loan advance shall render the producer subject to criminal prosecution under applicable Federal statutes. In addition to any liability under criminal or civil fraud statutes, the producer shall be personally liable to CCC for the amount of the loan advance and for all costs which CCC incurred as a result of the producer's fraudulent representation, together with interest upon such amounts at the rate per annum equal to the rate of interest which was charged CCC by the Treasurer of the United States on the date the price support loan advance was made. The producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

(i) *Ineligible peanuts.* Any person who causes ineligible peanuts (as defined in § 1446.64), to be placed in the loan program shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan rate (whichever is applicable) for that type of peanuts exceeds the market price for such type for crushing, as determined by CCC. Such person shall pay such amount to CCC promptly upon demand. Liquidated damages under this subsection may be reduced by the Executive Vice President, CCC, or his designee based upon a consideration of the following factors: (1) Whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral; (2) the degree of damage or potential damage to the price support program; (3) the nature and circumstances of the violation; (4) the extent of the violation; and (5) any other pertinent information.

§ 1446.61 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts under loan. Bright hull and dark hull Valencia peanuts produced in the southwest area shall be considered as different types for purposes of establishing pools under this section. Net gains on peanuts in each pool shall be distributed to each producer in proportion to the value of peanuts placed in the pool by the producer, except that any distribution of net gains with respect to additional peanut pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer. In addition, the proceeds due to any producer from any pool shall be reduced by the amount of any losses which are incurred by CCC with respect to peanuts which are transferred from an additional loan pool to a quota loan pool under the provisions of this subpart.

(a) *Quota pool.* Net gains from peanuts in the quota pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness on quota peanuts and other costs or losses which are incurred by CCC as the result of such peanuts being placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold for domestic food and related uses which is equal to the losses incurred in disposing of quota peanuts of the same type and segregation in the same production area.

(b) *Additional pool.* Net gains for peanuts in the additional pool shall consist of:

(1) The net gains which are in excess of the loan indebtedness on additional peanuts and other costs or losses which are incurred by CCC as the result of such peanuts being placed in the pool by a producer, less

(2) An amount of the net gains from the additional pool allocated to the quota pool pursuant to paragraph (a)(2) of this section to offset quota pool losses.

[48 FR 21536, May 13, 1983, as amended by Amdt. 2, 49 FR 37731, Sept. 26, 1984; Amdt. 2, 50 FR 50282, Dec. 10, 1985]

§ 1446.62 Producer indebtedness.

(a) *Facility and drying equipment loans.* If an installment or installments on any loan made by CCC on farm storage facilities or drying equipment are payable under the provisions of the note evidencing such loan and the amount due is recorded on the producer's marketing card, any amount due the producer under this subpart, after deduction of payments due prior lienholders, shall be applied to such installment(s).

(b) *Producers listed on county debt record.* If the producer is indebted to CCC, Farmers Home Administration, or to any other agency of the United States, and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amount due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, Part 13 of this title.

§ 1446.63 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State, or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreage as required by Part 718 of this title shall be eligible for price support at the quota loan rate unless the late-filed report was accepted by the county ASC committee. In addition, no producer shall be eligible for price support at the quota loan rate if the producer has filed an erroneous report of crop or land use acreage unless: (1) The determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title; or (2) the county ASC committee determines that the producer acted in good faith in reporting the crop or land use acreage.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or of a ward or of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustees shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements: (1) The right of majority has been conferred on such minor by court proceedings or by statute; (2) a guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had such minor been an adult.

§ 1446.61 Eligible peanuts.

Eligible peanuts shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer.

(a) *Quota support.* Peanuts eligible for quota support are peanuts which meet the following requirements. The peanuts:

(1) Must be Segregation 1 peanuts;

(2) Must contain not more than 10 percent moisture and which, if mechanically dried, contain at least 6 percent moisture;

(3) Must contain no more than 10 percent foreign material;

(4) Must be free and clear of all liens and encumbrances, including any landlord's liens, unless acceptable waivers are obtained;

(5) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which: (i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, (ii) are free from holes, (iii) are finished at the top with either the selvage edge of the material, a binding, or a hem, and (iv) are uniform in size with approximately 2 bushel capacity;

(6) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(7) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

(b) *Additional support.* Peanuts eligible for additional support are peanuts which meet the following requirements. The peanuts:

(1) Must contain not more than 10 percent moisture;

(2) Must contain not more than 10 percent foreign material, except that such peanuts may contain more than 10 percent foreign material, if the handler agrees to purchase such peanuts for domestic edible use as provided in § 1446.56(a).

(3) Must be free and clear of all liens and encumbrances, including landlord's liens, unless acceptable waivers are obtained;

(4) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which: (i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, (ii) are free from holes, (iii) are finished at the top with either the selvage edge of the material, a binding, or a hem, and (iv) are uniform in size with approximately 2 bushel capacity;

(5) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(6) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

Peanuts which are graded as Segregation 2 or 3 and which, because they contain more than 10 percent moisture and/or foreign material, would otherwise not be considered acceptable for loans under the provisions of paragraphs (b)(1) and (2) will nonetheless be considered eligible for loans, provided that all other conditions of this section are met, if: The level of moisture does not exceed a level determined to be acceptable by the association; the local crushing market for peanuts is such that the peanuts can be crushed within a reasonable time, as determined by the association; and the producer has made a bona fide effort, as determined by the association, to clean and dry such peanuts prior to offering such peanuts for loan.

(c) *Ownership requirement.* In addition to the requirements set out above, the beneficial interest in all peanuts of all segregations tendered for support as either quota or additional peanuts must be in the producer who delivers them to the association and must always have been in such producer or a former producer whom such producer succeeded before the peanuts were harvested. In order to meet the requirements of succession, the rights, responsibilities, and interests of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether his interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the appropriate county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC.

§ 1446.65 Disposition of Segregation 3 peanuts and liquidated damages.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall:

(1) Deliver the peanuts to the association subject to the conditions set forth in this subpart for loan at the additional loan rate;

(2) Deliver such lot as contract additional peanuts subject to the provisions of § 1446.54;

(3) Sell such peanuts as quota peanuts subject to the conditions set forth in this subpart to a handler who is a signer of the peanut marketing agreement or to any handler in the event that such peanuts are seed peanuts produced under the auspices of a State agency if the handler to whom the peanuts are sold has signed a supervision supplement to the warehousing contract with the area marketing association; or

(4) Retain the lot for seed.

(b) *Failure to properly dispose of Segregation 3 peanuts.* If the producer does not dispose of or market such peanuts as provided above on the date of inspection, such producer shall be ineligible for continued quota price support for the rest of the marketing year on all peanuts at the close of business on the day of the inspection.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot for seed, the producer shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the ASCS-1007 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts for crushing as quota peanuts without benefit of price support.

(d) *Liquidated damages.* Any producer participating in the price support loan program shall be deemed to have agreed that: CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by CCC; the amount of such damages will be difficult, if not impossible, to ascertain exactly; and, with respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, such producer shall pay to CCC as liquidated damages and not as a penalty, the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.60(i) relating to the producer's liability shall not be applicable to such peanuts. However, the producers retain such liability as the producer may have under any applicable civil or criminal fraud statute.

§ 1446.66 Producer transfers of additional loan stocks to quota pools.

(a) Except as provided in paragraph (b) of this section, producers may transfer Segregation 2 and Segregation 3 additional loan collateral peanuts to the quota loan pool after the producer has completed marketing and returned his marketing card to the county office. Such transfer may not exceed the smaller of the effective farm poundage quota minus the production of Segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: *Provided,* That the pool proceeds due such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any Segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for Segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketings of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer must indicate to the county office the net weight and applicable Form ASCS-1007 numbers for the peanuts to be transferred. Such pounds shall be considered as marketing of quota peanuts, the applicable ASCS-1007 shall be appropriately adjusted and the producer will be advanced the appropriate difference between the additional and quota support rates.

(b) Effective with respect to the 1984 and subsequent crops of peanuts, no transfer of Segregation 2 and Segregation 3 additional loan collateral peanuts to a quota loan pool shall be permitted under the provisions of paragraph (a) of this section for a farm with respect to that quantity of peanuts for which the producers on the farm have executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation.

[48 FR 21536, May 13, 1983, as amended by Amdt. 3, 50 FR 10751, Mar 18, 1985]

§ 1446.67 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0003, 0560-0006, 0560-0014, 0560-0015, 0560-0023, 0560-0024, 0560-0076, 0560-0102, 0560-0107, and 0560-0108.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108A, 401, *et seq.*, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445c-1, 1421, *et seq.*); secs. 359, 375, 52 Stat. 31, 64, as amended (7 U.S.C. 1359, 1375))

[48 FR 54809, Dec. 7, 1983]

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

Sec.

1464.1 Administration.
1464.2 Availability of price support.
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1464.11 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070 as amended, 1072, as amended, 15 U.S.C. 714b, 714c, secs. 101, 106, 106A, 401, 403, 63 Stat. 1051, as amended, 74 Stat. 6 as amended, 96

Stat. 197, as amended, 63 Stat. 1054, as amended, 7 U.S.C. 1441, 1445, 1445-1, 1421, 1423.

Subpart A—Tobacco Loan Program

SOURCE: 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

§ 1464.1 Administration.

(a) This program will be administered by the Tobacco and Peanuts Division, ASCS, under the general direction and supervision of the Executive Vice President, CCC. The program will be carried out by cooperative marketing associations (hereinafter referred to as "associations") acting on behalf of their producer members. To obtain a price support loan, an association must enter into a loan agreement with CCC. The loan agreement will set forth terms and conditions for making price support available to producers. To the extent provided in the loan agreement, an association shall meet the eligibility requirements for price support prescribed in the Cooperative Marketing Associations Eligibility Requirements for Price Support (Part 1425 of this chapter), as amended. CCC reserves the right to restrict the number of associations with which it will contract. In so doing, CCC will select such associations as it deems necessary or desirable to effectuate the purposes of the program with a maximum of efficiency and economy of operations. The names of such associations may be obtained from the Tobacco and Peanuts Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(b) Each year CCC will make loans to associations. The associations in turn will make price support advances available to eligible producers either directly or through auction warehouses. The tobacco on which producers receive price support advances will serve as security for the loans. Loans made to associations will include not only the initial loan value of the tobacco, but also amounts to cover costs of receiving, processing, storing, and selling the loan tobacco, including that part of overhead costs not borne by the association pursuant to § 1464.4. Associations will be authorized to enter into contracts for these services through the usual trade channels. Loans also may include amounts to cover any Federal and State income taxes which the associations are required by the Internal Revenue Service or State governmental body to pay on income received from the sale of loan tobacco.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 51555, Nov. 16, 1982; 48 FR 21110, May 11, 1983]

§ 1464.2 Availability of price support.

(a) *Kind of tobacco.* Price support will be available to eligible producers on the following kinds of eligible tobacco subject to conditions listed in §§ 1464.7 and 1464.8 respectively.

Flue-cured tobacco, types 11, 12, 13, and 14.
Kentucky-Tennessee Fire-cured tobacco, types 22 and 23.
Virginia Fire-cured tobacco, type 21.
Virginia Sun-cured tobacco, type 37.
Dark Air-Cured tobacco, types 35 and 36.
Burley tobacco, type 31.
Maryland tobacco, type 32.
Cigar filler tobacco, type 41.
Cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55.
Puerto Rican tobacco, type 46.
Cigar binder tobacco, types 51 and 52.

(b) *Method of providing price support*—(1) *Through auction warehouses.* (i) Price support will be available for each lot of eligible tobacco offered for sale at auction warehouses which have contracted with an association, on a form of agreement approved by CCC, to make price support advances to producers on behalf of the association. Producers will deliver their tobacco to auction warehouses which will display the tobacco and offer it for sale at auction. Each contract between an association and an auction warehouse will require the auction warehouse to see that producers are informed that price support advances are available for each lot of eligible tobacco offered for sale at auction when the final bid is less than the price support rate available for the grade of eligible tobacco comprising such lot. For Flue-cured and Burley tobacco, the associations' contracts with auction warehouses will also require the auction warehouses to mark any tobacco sale bill "No Price Support" if the marketing of the pounds of tobacco covered by such bill will result in the producer marketing in excess of 110 percent of the producer's effective farm marketing quota. Producers will receive price support advances from the warehouseman for any tobacco to be consigned by the warehouseman to the association. Price support advances will be paid to the producer at the time the warehouseman settles with the producer for the entire quantity of the producer's tobacco that has been displayed for inspection and offered for sale on any one day's auction market. The warehouseman will be reimbursed by the association with funds borrowed from CCC.

(ii) Price support will be available only at warehouses where tobacco inspection service is provided by the Agricultural Marketing Service, USDA. Inspection and price support services may be extended to new markets or to additional sales on established markets in accordance with this part and Subpart A of Part 29 of this title which provides for formal public hearings prior to extending of additional services.

(iii) CCC reserves the right to direct the association to withhold a contract under the price support program from any auction warehouse for one or more years if, based on previous performance of similar contracts, or other evidence, there is substantial reason to believe that such warehouse will not fulfill its contract obligations.

(2) *Special requirements for flue-cured tobacco.* Price support will be available only on flue-cured tobacco which has been designated for sale at specific warehouses by the producer under the following conditions:

(i) *Definition.* "Producer" as used in this paragraph means the person who was issued the tobacco marketing card pursuant to Part 725 of this title.

(ii) *Producer designation of warehouses.* Producers will be required, as a condition of price support, to designate the warehouses at which they will market their tobacco. Such designations may be at any warehouse or warehouses in any market within a radius of 100 miles from the county seat of the county in which the farm is located, or if such farm is physically within two counties, then from the county seat of the county in which the county ASCS office administering that farm is located. To the extent there are less than eight markets within such radius, any warehouse or warehouses in any of the eight markets nearest to the county seat may be designated. A producer may obtain price support only in a warehouse which the producer has designated, and at each such warehouse only with respect to the quantity of tobacco designated for sale at such warehouse.

(iii) *When producer designations shall be made.* Producers must designate the warehouse(s) at which they will market their tobacco during a period which shall be announced beforehand by the local county ASCS office. The period for making designations shall be before May 31 each year. Producers who lease quota or whose farm is reconstituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be marketed according to procedures to be established by the Deputy Administrator, State and County Operations, ASCS. Producers who have designated warehouses which cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (changes in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms which have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

(iv) *Form and content of designations.* A designation shall be made for each warehouse at which a producer desires to market tobacco by executing a form provided by the county ASCS office. The producer will be required to indicate on such form the name of the warehouse or warehouses designated by the producer and the pounds of flue-cured tobacco the producer desires to sell at such warehouse as well as any other information required to be stated on such form.

(v) *Entering warehouse designation information.* The warehouse code number of the warehouse the producer has designated will be indicated on the farm marketing card. If an effective date is determined in accordance with paragraph (b)(2)(iii) of this section, such effective date will be shown on the farm marketing card. If the producer has not designated a warehouse, a warehouse code will not be shown on the marketing card. Changes in designation by the producer shall be accomplished by the producer returning the marketing card to the county ASCS office and requesting the transfer of any unmarketed pounds of flue-cured tobacco shown on any marketing card to another eligible warehouse or warehouses.

(vi) *Use of warehouse designation information.* (A) A separate sale bill marked "no price support" shall be prepared for that quantity of tobacco weighted in that is in excess of the balance of the pounds designated as shown on the marketing card:

(B) The warehouse shall mark "no price support" on a sale bill for any tobacco which is presented for sale and which is accompanied by a marketing card which does not show a warehouse code, which shows a code of another warehouse, or which shows an effective date which is later than the date on which the tobacco is presented for sale.

(vii) *Availability of designation information.* Each county ASCS office shall send all designations received to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, North Carolina, following each designation period and each period for changing designations. That association shall inform the Flue-Cured Tobacco Advisory Committee of the pounds designated to each warehouse and the pounds of any undesignated tobacco which, for the purpose of recommending opening dates and selling schedules in accordance with Part 29 of this title, is available for apportioning for sale at each warehouse. That association also shall furnish each warehouse the name and address of the producers who designated the warehouse, the pounds each designated and the pounds which represented 110 percent of the marketing quota of each such producer.

(viii) *Failure to comply with opening date and selling schedule by warehouses.* Warehousemen shall comply with opening date and selling schedule requirements as provided in 7 CFR 29.9406.

(3) *Upon direct delivery to the Association.* Eligible producers in nonauction market areas may deliver eligible tobacco to central receiving points designated by the appropriate association. Eligible producers in auction market areas who have eligible tobacco which is security for a farm storage loan obtained pursuant to Part 1421 of this chapter may, after the close of all auction markets for such kind of tobacco, including cleanup sales, deliver the tobacco to central receiving points designated by the appropriate association. After the tobacco has been graded by USDA inspectors, the producer will receive the price support advance directly from the association for any amount in excess of the amount necessary to repay the farm stored loan.

(4) *Period of price support.* Price support will be available to eligible producers on eligible tobacco only during each year's normal marketing season for each kind of tobacco for which support is provided. In case of loans on farm stored flue-cured tobacco which is delivered directly to the association, the normal marketing season shall include the date the producer was directed to deliver the tobacco to the association which will be soon after the close of all markets including cleanup sales.

(5) Beginning with the 1981 crop, eligible producers may obtain price support on untied burley tobacco packed

in bales subject to the following conditions:

(i) The quality and condition of the tobacco contained in each bale delivered for price support as a single lot will be representative of the quality and condition of the tobacco contained in all other such bales of the same lot.

(ii) The tobacco in each bale will be stalk-cured.

(iii) The bales will not contain foreign matter or conceal inferior tobacco.

(iv) Specification of bales:

(A) Bales must be approximately 1x2x3 feet in size.

(B) The leaves in bales must be untied and oriented.

(C) The basket ticket shall show the number of bales in the lot. Each bale in the lot shall be identified by a uniform identification tag 1⅝ inches wide by 3¼ inches long which shall be attached securely to the bale and shall show at least the following information: (*1*) Warehouse registration number, (*2*) basket ticket identification number, and (*3*) bale number.

[45 FR 9253, Feb. 12, 1980; 45 FR 26687, Apr. 21, 1980, as amended at 45 FR 68914, Oct. 17 1980; 46 FR 48901, Oct. 5, 1981; 47 FR 28607, July 1, 1982; 47 FR 44542, Oct. 8, 1982; 48 FR 28425, June 22, 1983]

§ 1464.3 Level of price support.

(a) The level of price support for eligible tobacco shall be as required by the Agricultural Act of 1949, as amended. For each crop of any kind of tobacco, the level of price support shall be determined by multiplying the support level of the 1959 crop or, if marketing quotas were disapproved for the 1959 crop, the level at which the 1959 crop would have been supported if marketing quotas had been in effect, by the ratio of (1) the average index of prices paid by farmers, as defined in section 301(a)(1)(C) of the Agricultural Adjustment Act of 1938, as amended, for the three calendar years immediately preceding the calendar year in which the marketing year begins for the crop for which the support level is being determined to (2) the average index of such prices paid by farmers for the 1959 calendar year.

(b) Effective for the 1982 and subsequent crops of tobacco, if the Secretary determines that the supply of any grade of any kind of tobacco of a crop for which marketing quotas are in effect or are not disapproved by producers will likely be excessive, the Secretary, after prior consultation with the appropriate association, may reduce the support rate which would otherwise be established for such grade of tobacco. Before reducing the support rate for a particular grade of tobacco, the Secretary must take into consideration the effect such reduction may have on the supply and price of other grades of other kinds of quota tobacco. After such reduction, however, the weighted average of the support rates for all eligible grades of such kind of tobacco shall reflect not less than (1) 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under paragraph (a) of this section, if the support level for such kind of tobacco is higher than the support level for the preceding crop, or (2) the support level for such kind of tobacco established under paragraph (a) of this section, if the support level for such kind of tobacco is not higher than the support level for the preceding crop. All official grades shall be considered in determining the weighted average of the grade loan rates. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the following factors will be considered: (i) The domestic supply, including domestic inventories, (ii) the amount of such tobacco pledged as security for price support loans, and (iii) anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco. Any adjustment in the support level for any marketing year shall be determined by comparing the support level computed in accordance with the provisions of paragraph (a) of this section for the preceding marketing year to the support level computed in accordance with the provisions of paragraph (a) for the current marketing year. If the computed support level for the current marketing year is higher than the computed support level for the preceding marketing year, an amount which is not less than 65 percent of such increase shall be added to the adjusted support level (determined in accordance with the provisions of this paragraph) which was in effect for the preceding marketing year and such total shall be the adjusted support level for the current marketing year. If the computed support level for the current marketing year is lower than such level for the preceding marketing year, the current marketing year support level shall be the preceding marketing year's adjusted support level: *Provided*, That if the computed support level for the current marketing year is less than the adjusted support level for the preceding marketing year, the computed support level shall be the support level in effect for the current marketing year.

(c) Nothwithstanding the foregoing paragraph of this section:

(1) For the 1983 crop of any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers the support level in cents per pound shall be the support level in cents per pound at which the respective 1982 crop was supported.

(2) For the 1984 crop of flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported.

(3) For the 1985 crop of flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported, plus or minus, respectively, the amount by which (i) the support level for the 1985 crop, as determined under paragraph (a) of this section, is greater or less than (ii) the support level for the 1984 crop, as determined under paragraph (a) of this section, as that difference may be adjusted by the Secretary under paragraph (b) of this section if the support level determined under paragraph (c)(3)(i) of this section is greater than the support level determined under paragraph (c)(3)(ii) of this section, except that the support level for the 1985 crop shall be the level in cents per pound at which the 1982 crop was supported if the support level determined under paragraph (a) of this section for the 1985 crop would not be more than 5 percent greater than the support level determined under paragraph (a) of this section for the 1984 crop.

(4) For the 1984 crop of any kind of tobacco (other than flue-cured tobacco) for which marketing quotas are in effect or are not disapproved by producers and for the 1985 crop of any kind of tobacco (other than flue-cured and burley tobacco) for which marketing quotas are in effect or are not disapproved by producers, the Secretary shall establish the support level at such level as will not narrow the normal price support differential between flue-cured tobacco and such other kind of tobacco. Before establishing the support level under this paragraph for any such kind of tobacco the Secretary shall publish in the FEDERAL REGISTER a notice of the level the Secretary proposes to establish and give an opportunity for the public to comment on the proposal. In determining the level to be established under this paragraph for a particular kind of tobacco, the Secretary shall take into consideration the cost of producing such kind of tobacco, the supply and demand conditions for such kind of tobacco, the comments received in response to the public notice of the proposal, and such other relevant factors as the Secretary determines appropriate.

(5) For the 1985 crop of burley tobacco and for the 1986 and each subsequent crop of any kind of tobacco for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported (or if the level for that crop was adjusted under paragraph (d) of this section, the level at which such crop would have been supported without regard to any adjustment under paragraph (d) of this section), plus or minus, respectively, the amount by which: (i) The support level for the crop for which the determination is being made, as determined under paragraph (a) of this section, is greater or less than (ii) the support level for the immediately preceding crop, as determined under paragraph (a) of this section, as that difference may be adjusted by the Sec-

retary under paragraph (b) of this section if the support level under paragraph (c)(5)(i) of this section is greater than the support level under paragraph (c)(5)(ii) of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, notwithstanding the provisions of paragraphs (b) and (c) of this section and section 403 of the Agricultural Act of 1949, as amended, the Secretary, if requested by the board of directors of the association through which price support for flue-cured tobacco is made available to producers, may:

(i) Designate for any crop certain grades of flue-cured tobacco that are eligible for price support (but representing in the aggregate not more than 25 per centum of the total quantity of the flue-cured tobacco crop that the Secretary estimates will be produced) that the Secretary determines are of such quantity or quality as to impair their marketability, and

(ii) Without regard to the weighted average of the support rates for eligible grades of flue-cured tobacco determined under paragraph (b) of this section, further reduce the support rates for such grades to the extent the Secretary deems necessary to reflect their market value, but in no event by more than 12 percent of the respective support rates that would otherwise be established under this section.

(2) Any reduction in the support rates for grades of flue-cured tobacco under paragraph (d)(1) of this section shall not be considered in determining the support levels for subsequent years.

(e) Except for crop year 1982, the level of price support for each kind of tobacco will be announced as soon as practicable after the beginning of each calendar year. Schedules of loan rates, by types and grades for each kind of tobacco, will be available in the county ASCS offices and from the producer association insofar as practicable before the opening of the markets. Flue-cured tobacco of varieties Coker 139, Coker 140, Coker 316, Reams 64, and Dixie Bright 244, or a mixture or strain of such seed varieties or any breeding line of Flue-cured tobacco seed varieties, including, but not limited to, 187 Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244 will be supported at one-half the support rate, plus 50 cents per hundred pounds, for comparable grades of acceptable varieties.

[47 FR 51555, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24373, June 13, 1984]

EDITORIAL NOTE: At 50 FR 4494, Jan. 31, 1985, the following amendment was published and will be corrected by CCC document published in the Federal Register at a later date:

In Part 1464, § 1464.3(c) is amended by inserting "Reams 266," after "Reams 64," each time it appears.

§ 1464.4 Deductions from advances.

(a) There may be deducted from price support advances paid to tobacco producers amounts to help defray administrative overhead costs incurred by producers associations through which price support is made available to tobacco producers.

(b) If any producer on a farm is indebted to the United States and such indebtedness is listed on the Claim Control Record, Form ASCS-604, the Government will effect collection of the amount of the indebtedness by setoff from the amount of price support advance due the producer in the following manner: Any marketing card covering tobacco eligible for price support issued for such farm in accordance with the applicable regulations issued by the Secretary of Agriculture with respect to marketing quotas (Parts 723 through 726 of this title) will bear a notation showing the indebtedness, the name of the debtor and the amount of the indebtedness. The acceptance and use of a marketing card bearing a notation of indebtedness to the United States by a producer named as debtor on such card will constitute an authorization by such producer to any tobacco warehouseman or association to pay the United States the price support advance due the producer to the extent of his/her indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual warehouse and authorized price support charges and amounts due prior lienholders. The acceptance and use of a marketing card bearing a notation and information of indebtedness to the United States will not constitute a waiver of any right of the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

(c) If any producer is indebted to the United States for a farm storage loan obtained pursuant to Part 1421 of this chapter, the principal amount of such loan will be deducted from the price support advance paid the producer by the association and will be applied to repayment of the farm storage loan.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 28608, July 1, 1982]

§ 1464.5 Interest rate and general provisions.

The loans made to the associations will bear interest at the rate announced by CCC for each crop and will be nonrecourse both as to principal and interest except in the case of misrepresentation, fraud or failure to carry out the loan agreement. In instances where the loan to the association is made on a quantity of tobacco on which a farm storage loan had been made, any unpaid interest applicable to the farm storage loan on such quantity of tobacco will not be collected from the producer who obtained the farm stored loan but will be added to the accrued interest of the loan made to the association. Tobacco loses its identity as to original ownership through commingling in the packing process, and individual producers may not redeem their tobacco once it has been pledged as security for the loan. Associations will sell the loan tobacco as provided in the loan agreements for each crop, and the net proceeds of sales of the loan collateral of each crop will be applied to the loan account for such crop until the loan is repaid in full. With respect to the 1981 and prior crops, if the proceeds from the sale of loan collateral of any crop exceed (a) the amount of the loan plus all fees, handling charges, operating costs and interest; and (b) any amount due CCC under a barter transfer agreement entered into between CCC and the association, such excess shall constitute "net gains" and shall be distributed in cash by the association to the producers who placed the tobacco under loan unless other disposition is approved by CCC.

[45 FR 9253, Feb. 12, 1980, as amended at 50 FR 7574, Feb. 25, 1985]

§ 1464.6 Maturity date.

Loans made under the program will mature on demand.

§ 1464.7 Eligible producers.

All producers of Puerto Rican tobacco are eligible producers, since Puerto Rican tobacco is not under U.S. marketing quotas. All producers of any kinds of tobacco for which marketing quotas have been terminated are eligible producers during the period for which the terminations are effective. Any producer of another kind of tobacco is an eligible producer if:

(a) An acreage allotment or marketing quota has been established for his/her farm under the applicable regulations issued by the Secretary of Agriculture with respect to marketing quota and acreage allotments (Parts 723 through 726 of this title) for the applicable marketing year.

(b) All the tobacco produced on the farm is produced on acreage which does not exceed the acreage allotment.

(c) If acreage allotments and marketing quotas are in effect for a kind of tobacco, the producer has reported the acreage planted to tobacco on the farm for the applicable year to the local county ASC committee in accordance with Part 718 of this chapter.

(d) The producer has complied with any certification the producer may have executed with respect to any untied burley tobacco packed in bales which is delivered for price support.

(e) Except with respect to the 1982 crop of flue-cured tobacco, the producer has certified in writing that any tobacco which the producer delivers for price support will not have been nested as defined in 7 CFR Part 29. If, after notice and opportunity for an administrative hearing in accordance with 7 CFR Part 780, CCC determines that a producer knowingly delivered nested tobacco for the purpose of receiving price support, such producer shall (1) be ineligible to receive price support for the particular lot found to be nested, and for any other tobacco from the date of such determination through the remainder of the marketing year and (2) refund to CCC any price support advance received with respect to such tobacco; and

(f) The producer has filed a report, with respect to tobacco to be used as collateral for a price support loan, certifying with respect to the use of pesticides on the tobacco as provided in § 1464.8; however, if the Administrator or his designee determines that the producer has filed a false report, failed to file a report, or refused to permit the sampling of tobacco to determine pesticide use, the producer will be ineligible to receive price support on tobacco produced during the marketing year. A producer may recertify with respect to pesticide usage if the recertification is filed prior to the time the tobacco has been offered as collateral for a price support loan or a request has been made to collect a sample for chemical analysis. Samples may be collected from the producer's tobacco where stored or on the producer's farm. Any producer who believes that the determination is not correct may file an appeal in accordance with 7 CFR Part 780.

[45 FR 9253, Feb. 12, 1980; 45 FR 26687, Apr. 21, 1980, as amended at 45 FR 63835, Sept. 26, 1980; 46 FR 48901, Oct. 5, 1981; 48 FR 28425, June 22, 1983; 49 FR 2466, Jan 20, 1984; 49 FR 23334, June 6, 1984; 49 FR 27134, July 2, 1984; 50 FR 4493, Jan. 31, 1985]

§ 1464.8 Eligible tobacco.

Eligible tobacco shall be United States and Puerto Rican tobacco (as defined in the Agricultural Adjustment Act of 1938, as amended) which:

(a) Is of a kind and crop for which price support is available;

(b) If marketing quotas are in effect has been properly identified in accordance with the applicable tobacco marketing quota regulations by (1) a marketing card which does not bear the words "No Price Support", and (2) if other than Flue-Cured or Burley tobacco, a marketing card which is designated a "Within Quota" marketing card;

(c) A report with respect thereto has been filed, on a form approved by the Deputy Administrator, by the producer with the local county ASC committee or, if Puerto Rican tobacco, with the Association certifying that all pesticides (incuding plant regulator, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco, have been approved by the Environmental Protection Agency and that the pesticides have been used in accordance with label directions.

(d) Shall not be tobacco of a kind for which growers have disapproved marketing quotas.

(e) If Flue-Cured tobacco or Burley tobacco, (1) is offered for marketing on a tobacco sale bill which is not marked "No Price Support", and is for a number of pounds which, when added to the pounds of Flue-Cured or Burley tobacco previously marketed on that year's marketing card, does not exceed 110 percent of the effective farm marketing quota for that year; or (2) is delivered directly to the association and is a quantity which, when added to the previous marketings on such card, does not exceed 110 percent of the effective farm marketing quota for that year;

(f) If flue-cured tobacco which was delivered to the association through an auction warehouse, is a quantity which, when added to previous marketings of that producer at that warehouse, does not exceed the quantity designated by the producer for marketing at that warehouse;

(g) Has been delivered to the association by the producer, either directly or through an auction warehouse, prior to sale to any other person;

(h) Has been delivered to the association by the producer either directly or through an auction warehouse, in lots identified by not more than one marketing card for each lot, and

(i) Is in sound and merchantable condition.

(j) Is tobacco produced on a farm for which an agreement to contribute to the No Net Cost Tobacco Fund or Account, as applicable, established for the association in accordance with § 1464.10 for such kind of tobacco has been filed with the local county ASC committee.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 51556, Nov. 16, 1982; 48 FR 21110, May 11, 1983; 49 FR 27135, July 2, 1984; 50 FR 4493, Jan. 31, 1985]

§ 1464.9 Auction warehouse certification of flue-cured tobacco.

Auction warehouses through which price support is made available to producers of flue-cured tobacco shall identify, through the use of "certified" basket tickets, all tobacco (including resale and "excess" tobacco) offered for sale at auction which is determined to be of varieties eligible for full price support. A distinguishably different type of basket ticket shall be used for all other tobacco offered for sale at auction. In the case of producer tobacco, the warehouseman shall examine the marketing card prior to the time the tobacco is offered for sale, record the marketing card serial number on the tobacco sale bill, and shall use certified basket tickets on the tobacco only if the marketing card presented does not bear the words "Discount Variety". In the case of resale tobacco (tobacco which has previously been sold by the producer), the Tobacco Marketing Quota Regulations provide that, when the State Executive Director, ASCS, determines there is a significant amount of discount variety tobacco available for marketing in any marketing year, such person may require tobacco which is eligible for full price support to be covered by a Form MQ-79-1, Dealer's Certification—Resale Tobacco, unless its eligibility for full price support is determined by the State Executive Director, or designee. When notified by the State Executive Director that this requirement is in effect, the warehouseman shall not use a certified basket ticket for resale tobacco unless a Form MQ-79-1 has been obtained and properly executed by the seller, or unless the State Executive Director has determined that the tobacco is eligible to be so identified. The Form MQ-79-1 Dealer's Certification—Resale Tobacco contains a certification by the seller to the USDA and the warehouse that the tobacco offered for sale and all other resale tobacco in which the dealer has an interest was purchased directly from the producer and was identified by a marketing card not bearing the words "Discount Variety" or was purchased by the dealer at auction sale through a warehouse having price support available to producers and was identified by a certified basket ticket. Properly executed Dealer's Certification—Resale Tobacco shall be furnished to the USDA representative stationed at the warehouse prior to the sale of the tobacco, with a copy to the warehouse. When the State Executive Director notifies the warehouse that the certifications of any dealer are not acceptable for this purpose, the Dealer's certification shall not be used by the warehouse as a basis for a "certified" basket ticket. Such notice will be given to all warehouses having price support available to producers if a dealer is found to have made a false certification, or if a dealer fails to file reports required by applicable marketing quota regulations. In the latter case, the notice will be rescinded when the dealer files the reports if they show that the dealer has not made false certifications with respect to identification of full support variety tobacco. Dealers making false certifications, or producers using marketing cards other than the one issued for the farm on which the tobacco was produced, to obtain use of certified basket tickets for tobacco not entitled to such identification, shall be subject to applicable provisions of law relating to conspiracy, fraud, or other offenses, and to penalties imposed by applicable marketing quota regulations. A dealer who has full support variety resale tobacco for which the Dealer's Certification cannot properly be executed because such tobacco or other tobacco in which he/she has an interest was acquired other than as the certification form provides, or a dealer whose certifications have been determined to be unacceptable, may have full support variety tobacco identified on a "certified" basket ticket through application to the State Executive Director. In such instances, if by examination of the marketing quota records and other evidence, the Director determines that the tobacco is of full support variety, a special authorization will be given for the warehouses to identify the tobacco on a "certified" basket ticket.

§ 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and documents in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *"Account"* means an account established within the CCC for an association, which account shall be known as the "No Net Cost Tobacco Account."

(2) *"Area"* when used in connection with an association (except Flue-cured), means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *"Association"* means a producer-owned cooperative marketing association which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *"CCC"* means the Commodity Credit Corporation.

(5) *"Fund"* means the capital account to be established within each association, which account shall be known as the "No Net Cost Tobacco Fund".

(6) *"Net gains"* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *"Quota tobacco"* means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

(8) *"To market"* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(b) *Establishing a No Net Cost Tobacco Fund.* (1) Except as provided in paragraph (c) of this section, each association shall establish within the association a Fund. The Fund established by each association shall be kept and maintained separate from all other accounts of the association.

(2) The Fund shall be comprised of amounts contributed by producer-members as provided in paragraph (b)(3) of this section. The rate of contribution required to be made for each pound of quota tobacco marketed shall be determined by each association with the approval of the Secretary. The Secretary shall approve the amount of the contributions determined by an association from time to time under this paragraph only if the Secretary determines that such amount will result in an accumulation of a Fund adequate to reimburse CCC for any net losses which CCC may sustain under its loan agreements with the association, based upon reasonable estimates of the amounts which CCC will lend to the association under such agreements and the proceeds which will be realized from the sales of tobacco which are pledged to CCC by the association as security for price support loans.

(3) As a condition of eligibility for receiving price support, each producer of each kind of quota tobacco (other than Burley quota tobacco with respect to the 1983 and subsequent crops) shall agree, with respect to all such kind of quota tobacco marketed from a farm for the current marketing year to contribute to the appropriate association for deposit in the association's Fund an amount determined by the association from time to time with approval of the Secretary. The farm operator shall be responsible for determining if all other producers on the farm agree to contribute to the Fund and may sign the agreement on their behalf. Such agreement shall be on a form prescribed by the Deputy Administrator and filed with the local county ASC committee prior to the issuance of a marketing card for such farm. With respect to kinds of tobacco for which poundage quotas are in effect, any producer who does not agree to contribute to the Fund may market his proportionate share of the farm marketing quota by use of a marketing card stamped "No Price Support." After the first marketing of tobacco

from the farm has been made by use of a "No Price Support" marketing card issued to any farm operator or producer who declined to contribute to the Fund, such farm operator or producer shall not be eligible for price support for the remainder of the current marketing year.

(4) Beginning with the 1983 and subsequent crops, as a condition of eligibility for price support for any marketing year of any three-year period for which marketing quotas are in effect (other than the period applicable to the 1982 crop), each producer of Burley quota tobacco shall (i) agree not later than a date established by the Secretary preceding the beginning of the first marketing year of such three-year period to contribute to the appropriate association, for deposit in the association's Fund, an amount determined from time to time by the association with the approval of the Secretary in each of the marketing years in such three-year period and (ii) file such agreement as prescribed in paragraph (b)(3) of this section. If during any such three-year period there is a new farm operator for an old Burley tobacco farm or there is a new farm operator as the result of a new Burley tobacco farm, the successor operator of the old Burley tobacco farm or the farm operator of the new farm shall agree, as a condition of eligibility for receiving price support, to contribute to the account in any remaining year in such three-year period and shall file such agreement as is prescribed in paragraph (b)(3) of this section.

(5) Effective for the 1983 crop only, each owner and operator of any Flue-cured tobacco farm that leases and transfers all or any part of the farm's marketing quota or acreage allotment to another farm shall be required to contribute to the Fund. The amount of such contribution for the quantity of tobacco from each crop represented by such lease shall be the same amount as the contribution required of producers of Flue-cured tobacco determined under paragraph (b)(3) of this section. The contribution shall be collected prior to or at the time of approval of the lease by the county ASC committee. Upon receipt of the contribution, the association shall issue such owner and operator capital stock or a capital certification as provided in paragraph (b)(9) of this section.

(6) All contributions shall, insofar as practicable, be deposited immediately into the association's Fund. The Fund shall be used exclusively, as prescribed by the Secretary, for the purpose of ensuring, insofar as practicable, that CCC, under its loan agreements with the association with respect to 1982 and subsequent crops of quota tobacco, will suffer no net losses (including, but not limited to, recovery of the amount of loans extended to cover the overhead costs of the association) after any net gains are applied to net losses of CCC under paragraph (f)(1) of this section: *Provided*, That, notwithstanding any other provision of this section, use by the association of moneys in the Fund, including interest and other earnings, for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of quota tobacco and making loan advances to producers is authorized, and use of such moneys for any other purposes that will be mutually beneficial to producers who contribute to the Fund and to the Corporation, shall, if approved by the Secretary, be considered an appropriate use of the Fund.

(7) The association may invest the monies in the Fund in such manner as the Secretary may approve and the interest or other earnings on such investment shall become a part of the Fund.

(8) If the Secretary determines that the amounts in the Fund, or the net gains which accrue from the sale of loan tobacco, exceed the amount necessary to reimburse CCC for any net losses which CCC may sustain under its loan agreements with the association, such excess: (i) In the case of an association making price support available to producers of quota tobacco other than Burley tobacco, will be released to the association by CCC and may be devoted to other purposes by the association, and (ii) in the case of an association making price support available to producers of Burley tobacco, will be released to the association by CCC and may be distributed, as de-

termined by the association, to the producer-members of the association as a capital distribution or net gain distribution.

(9) Producers making contributions to the Fund shall: (i) In the case of quota tobacco marketed other than by consignment to an association for a price support advance, receive from the association capital stock or, if the association does not issue such stock, a capital certificate having a par value or face amount, respectively, equal to the contribution; and (ii) in the case of quota tobacco consigned by the producer to an association for a price support advance, receive from the association a qualified per unit retain certificate, as defined in section 1388(h) of the Internal Revenue Code, having a face amount equal to the amount of the contribution and representing an interest in the association's Fund.

(c) *Establishing a No Net Cost Tobacco Account.* (1) Notwithstanding paragraph (b) of this section, the Secretary shall, upon the request of any association, and may, if the Secretary determines, after consultation with such association, that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association: (i) Continue to make price support available to producers through such association in accordance with loan agreements entered into between CCC and such association; (ii) establish and maintain a No Net Cost Tobacco Account for such association in lieu of the No Net Cost Tobacco Fund.

(2) If an Account is established for an association under this paragraph, any amount in the Fund which is established within such association in accordance with paragraph (b) of this section shall be applied or disposed of in such manner as the Secretary may approve or prescribe, except that such amount shall, to the extent necessary, first be applied or used for the purpose therefor as prescribed in such paragraph (b).

(3) Any Account established for an association shall be established within CCC and shall be comprised of amounts paid by producers in accordance with paragraph (c)(4) of this section. The Secretary shall determine and adjust from time to time, in consultation with such association, the amount of the marketing assessment which shall be imposed, as a condition of eligibility for price support with respect to each pound of the kind of tobacco which is marketed by a producer from a farm within such association's administrative area. The amount of such assessment shall be equal to an amount which, when collected, will result in an accumulation of an Account for such association adequate to reimburse CCC for any net losses which CCC may sustain under its loan agreements with such association. Such amount shall be based on reasonable estimates of the amounts which CCC will lend to such association under such agreements and the proceeds which will be realized from the sales of the kind of tobacco involved which are pledged to CCC by such association as security for price support loans.

(4) If an Account is established for an association under this paragraph, the Secretary shall require as a condition of eligibility for price support that each producer of a kind of tobacco involved whose farm is within such association's administrative area must agree, with respect to all such kind of tobacco marketed by the producer from the farm in the current marketing year, to pay to CCC, for deposit in such association's Account, marketing assessments as determined under paragraph (c)(3) of this section. The farm operator shall be responsible for determining if all other producers on the farm agree to pay marketing assessements to the Account and may sign the agreement on their behalf. Such agreement shall be on a form prescribed by the Deputy Administrator and filed with the local county ASC committee prior to the issuance of a marketing card for such farm. With respect to kinds of tobacco for which poundage quotas are in effect, any producer who does not agree to pay assessments to the Account may market his proportionate share of the farm marketing quota by use of a marketing card stamped "No Price Support". After the first marketing of tobacco

from the farm has been made by use of a "No Price Support" marketing card issued to any farm operator or producer who declined to pay marketing assessments, such farm operator or producer shall not be eligible for price support for the remainder of the current marketing year.

(5) Amounts contributed and deposited in the Account shall be used for the purpose of ensuring, insofar as practicable, that CCC under its loan agreements with an association, will suffer no net losses (including, but not limited to, recovery of the amount of loans extended to cover the overhead costs of an association), after any net gains are applied to net losses of CCC.

(6) If an Account is established under paragraph (c)(1) of this section, the loan agreement between CCC and an association shall provide that if the Secretary determines that the amount in such Account or the net gains referred to in paragraph (f)(1) of this section exceed the amounts necessary for the purposes of this section, then the Secretary, in consultation with such Association, may suspend the payment and collection of marketing assessments under this section upon terms and conditions established by the Secretary.

(d) *Collection and marketing assessments and contributions.* (1) Any marketing assessment or contribution to be paid by a producer shall be collected from: (i) The person who acquired the tobacco from such producer, except that an amount equal to such assessment or contribution may be deducted from the price paid such producer if such tobacco is marketed by sale; (ii) a warehouseman or other agent who may deduct an amount equal to such assessment or contribution from the price paid to the producer; or (iii) a producer if such tobacco is marketed directly to any person outside the United States.

(2) Persons responsible for collecting the marketing assessments or contributions as required by this section shall remit such collections to the applicable Association or State ASCS office on the last day of the week in which such collections are due. A late payment charge shall be assessed with respect to any responsible person's obligation that is due but which is submitted late. Such late payment charge shall be calculated and assessed in accordance with the provisions of 7 CFR Part 1403.

(e) *Penalties for marketing certain tobacco that is not eligible for price support.* Effective for 1983 and subsequent crops of tobacco, the marketing of any kind of quota tobacco that is not eligible for price support because the farm operator or producer on the farm has not agreed to make contributions to the Fund or pay assessments to the Account as required by this section shall be subject to penalty at 75 percent of the average market price (calculated to the nearest whole cent) for such kind of tobacco for the immediately preceding marketing year.

(f) *Loan agreements.* (1) Loan agreements between CCC and an association for which a Fund or Account has been established shall provide that CCC shall retain the net gains from each of the 1982 and subsequent crops of tobacco pledged by the association as security for price support loans. Such net gains will be used to offset any losses sustained by CCC under its loan agreements with the association for any of the 1982 and subsequent crops of loan tobacco, or to reduce the outstanding balance of any price support loan made by CCC to the association under such agreements for 1982 and subsequent crops of tobacco, or for both such purposes.

(2) If any association which establishes a Fund or Account and enters into a tobacco loan agreement with CCC with respect to 1982 or subsequent crops of quota tobacco and fails or refuses to comply with these regulations or the terms of the tobacco loan agreement, the Secretary may terminate the loan agreement or provide that no additional loan funds may be made available thereunder to the association. In such event, the Secretary will make price support available to producers of the kind or kinds of tobacco, the price of which had been supported through loans to such association, through such other means as are authorized by the Agricultural Act of 1949, as amended, or the Commodity Credit Corporation Charter Act.

(3) Any association for which a fund is established under paragraph (b) of this section or an Account is established under paragraph (c) of this section and the loan agreement between CCC and such association is terminated, or if such association is dissolved, merges with another association, or otherwise ceases to operate, or if such Fund or Account terminates by operation of law, then amounts in such Fund or Account and the net gains referred to in paragraph (f)(1) of this section shall be applied to or disposed of in such manner as the Secretary may prescribe, except that they shall, to the extent necessary, first be applied to or used for the purposes therefor prescribed in this section.

[47 FR 51556, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24374, June 13, 1984]

§ 1464.11 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulations (7 CFR Part 1464) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0047 and 0560-0076.

[49 FR 2466, Jan. 20, 1984 and 49 FR 23334, June 6, 1984, as amended at 49 FR 27135, July 2, 1984; 50 FR 4493, Jan. 31, 1985]

PART 1468—MOHAIR

Subpart—Payment Program for Mohair (1982-1985)

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SOURCE: 39 FR 11987, Apr. 2, 1974, unless otherwise noted.

Subpart—Payment Program for Mohair (1982-1985)

SOURCE: 43 FR 9456, Mar. 8, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 1468.101 General.

This subpart sets forth the policies, procedures, and requirements governing price support payments by Commodity Credit Corporation (referred to in this subpart as "CCC") for mohair for the 1982, 1983, 1984, and 1985 marketing years.

[43 FR 9456, Mar. 8, 1978, as amended at 47 FR 15097, Apr. 8, 1982]

§ 1468.102 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. In the field, the program will be administered through the ASCS State and county offices. ASCS State and county offices do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto unless the power to modify or waive is expressly included in the pertinent provision.

§ 1468.103 Announcement of price support level.

Pursuant to the National Wool Act of 1954, as amended, the Secretary of Agriculture shall announce a price support level for mohair which has been determined to meet the requirements of the Act for each of the 4 marketing years, 1982, 1983, 1984, and 1985. Such announcement shall, to the extent practicable, be made sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.

[43 FR 9456, Mar. 8, 1978, as amended at 47 FR 15097, Apr. 8, 1982]

§ 1468.104 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the femine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"Family member" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

"Financing agency" means any bank, trust company, or Federal lending agency. It also includes any other financing institution which customarily makes loans or advances to finance production of goats or mohair.

"Goat" means an Angora goat and the term also includes a kid of an Angora goat.

"Grease mohair" means mohair as it comes from the Angora goat or the kid of an Angora goat before applying any process to remove the natural oils or fats.

"Joint owners" means two or more persons who own the mohair in question, regardless of the special nature of their relationship or how it came into being, and shall include owners in common.

"Joint producers" means two or more producers who are joint owners of mohair, or who are producers of mohair under a caretaking agreement pursuant to which one producer owns the goats and the other producer furnishes labor in connection with mohair production in return for which the producer is entitled to share either in the mohair produced or in the proceeds from the sale of such mohair.

"Local shipping point" means the point at which the producer delivers mohair to a common carrier for further transportation or, if the mohair is not delivered to a common carrier, the point at which the producer delivers it to the marketing agency or a purchaser. The term "common carrier" includes any carrier that serves the public in transporting goods for hire whether or not such carrier is required to be licensed by some Government authority to do so.

"Marketing agency" with reference to mohair means a person who sells a producer's mohair for the producer's account.

"Marketing year" means the period beginning January 1 and ending the following December 31, both dates inclusive.

"Mohair" means the hair of the Angora goat and also includes the hair of a kid of a Angora goat.

"Mohair incentive payment rate" means the percentage required to bring the national average price received by all producers for the sale of mohair up to the incentive price.

"Person" means an individual, partnership, association, business trust, corporation, or any organized unincorporated group of individuals, and includes a State and any subdivision thereof.

"Producer" of mohair means a person who either owns, individually or jointly, the goat from which the mohair is shorn or is a joint producer of the mohair under a caretaking agreement described in paragraph (c) of this section.

"*Sales document*" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn mohair to the purchaser.

"*Shorn mohair*" means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts or mohair shared from pelts, scoured, or dyed mohair or yarn, skeins or other terms which identify the mohair as being other than in its natural greasy state.

"Specified marketing year" is the marketing year which the Department of Agriculture has announced that marketings of mohair by a producer during that year will entitle the producer to a payment under this program.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985]

§ 1468.105 Price support payments.

With respect to each specified marketing year, price support payments on shorn mohair marketed in each marketing year will be available to producers in accordance with the provisions of this subpart.

[50 FR 47033, Nov. 14, 1985]

§ 1468.106 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn mohair under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1468.115, the applicant must be the producer of shorn mohair. In the case of a joint application for payment, each applicant must be a producer of shorn mohair which is marketed in accordance with provisions of § 1468.107(c).

(c) The mohair must have been shorn in the United States.

(d) The producer, or in the case of joint producers at least one of the producers, must have owned the mohair at the time of shearing and must have owned in the United States the goats from which the mohair was shorn for not less than 30 days at any time prior to the filing of the application. Ownership of mohair or goats as used in this paragraph does not include the ownership which is some States is held by a person having a security interest, such as a mortgage or other lien.

(e) Beneficial interest in the mohair must always have been in the producer from the time the mohair was shorn up to the time of its sale. A producer has beneficial interest in mohair:

(1) When the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or (2) when the producer has, by transfer of legal title to such other person or otherwise, authorized another person to sell or otherwise dispose of the mohair but continues to be entitled to the proceeds from any such sale or other disposition thereof. Such beneficial interest is not changed by a mortgage or other lien on the mohair.

(f) Payments shall only be made with respect to bona fide marketings of shorn mohair. The sale of shorn mohair which has been altered in any manner through processing, other than scouring as provided in § 1468.111(a)(3), or any other process or act that results in a mohair product, as determined by the Deputy Administrator, is not eligible for a payment under this subpart.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985]

§ 1468.107 Bona fide marketing within a specified marketing year.

(a) Marketing shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell in the process of marketing, the last of the following three events, in whatever order they occur, was completed in that marketing year:

(1) Title passed to the buyer; (2) the mohair was delivered to the buyer (physically or through documents which transfer control to the buyer); and (3) the last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer is known to the marketing agency, if the applicant markets directly.

In addition the full amount due the producer in connection with the marketing of mohair must be paid to the applicant in cash, merchandise, or services rendered before the producer may include it in the application for payment.

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that: (1) The producer acted in good faith in marketing the mohair; (2) a bona fide marketing occurred; (3) the mohair was not returned to the producer; (4) the producer was not aware and had no reason to suspect that the document tendered in payment for the mohair was not worth its face value at the time of acceptance of the document, and (5) the producer made a diligent effort to obtain payment for the mohair from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1468.109 shall not exceed the fair market value of the mohair as determined by the Deputy Administrator.

(c) For the purpose of determining a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn mohair in exchange for a specific amount of money per pound of mohair tendered, or for services of merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of mohair by a producer shall constitute a bona fide marketing if: (1) The mohair is sold to a person or business which normally buys mohair; (2) the producer selling the mohair does not sell the mohair to a family member or to any business in which the producer has more than a 20 percent interest; (3) the sale is based on the fair market value for mohair; and (4) the person or business buying the mohair is also engaged in the business of buying and selling grease basis mohair and buys the mohair in the course of that business.

(d) The exchange of mohair for merchandise or services of a nature other than mohair or mohair products will be considered as a bona fide marketing if a definite price for the mohair is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such mohair, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1468.109.

(e) The delivery of mohair on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee.

Notwithstanding the foregoing, mohair delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency: (1) Has guaranteed a minimum sales price; (2) is unable to sell the mohair for more than the minimum sales price; and (3) takes possession of the mohair at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the mohair when the mohair has been transferred to a marketing agency and the producer provides that such agency shall market the mohair and that the producer shall be entitled to the proceeds of such marketing.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47033, Nov. 14, 1985]

§ 1468.108 Rate of payment.

At the end of each specified marketing year the mohair price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee.

[50 FR 47034, Nov. 14, 1985]

§ 1468.109 Computation of payment.

(a) The amount of the payment due to a producer shall be computed by applying the rate of payment to the net sales proceeds for the mohair marketed during the specified marketing year.

(b) Except as provided in § 1468.111(a)(6) with respect to a guaranteed minimum sales price, the net sales proceeds shall be determined by deducting from the gross sales proceeds of the mohair all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figure so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point. Charges for furnishing bags or storing the mohair, as well as any other charges not directly related to the marketing of the mohair, such as interest on advances, shall not be considered marketing charges.

(c) All applications filed by a producer in the same county office for payments due on mohair marketed during the specified marketing year shall be considered together for the purpose of determining the total amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1468.110 Preparation of application.

(a) *Preparation.* The application for payment on the sale of mohair shall be prepared on Form CCC-1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of mohair and sending the sales documents to the appropriate ASCS county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document in arriving at the net proceeds.

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of mohair. The processing of shorn mohair by a process or act which, as determined by the Deputy Administrator, produces a mohair product, shall make the mohair ineligible for a price support payment. Payment shall not be made on marketings of mohair products, including items identified as yarn, mohair yarn, skeins, or novelty items. Trimming, skirting, and cleaning by scouring, provided the grease basis weight is established, does not disqualfy the mohair for a price support payment.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain with the ASCS county office, a photostat, carbon, or other copy of the original document may be submitted. However, the applicant must show the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant, who shall retain it in accordance with § 1468.122.

(d) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm preparing the sales document to furnish a carbon or other copy to the seller in the place of the original, the producer may submit that copy in support of his application, provided the copy bears a signature, in accordance with § 1468.111 (a)(10), of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes mentioned in this section.

(e) *Lost or destroyed sales document.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the buyer or the applicant's marketing agency, and such certified copy shall be treated as an original for the purposes mentioned in this section.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47034, Nov. 14, 1985]

§ 1468.111 Contents of sales documents.

The sales documents attached to each application for payment must contain a final accounting and meet the requirements of paragraph (a) or (b) of this section, for the mohair covered by the sales document. Contracts to sell as well as tentative or pro forma settlements will not be acceptable as sales documents meeting such requirements. Except as provided in § 1468.115, sales documents must cover mohair sold by the producer.

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of mohair at the producer's farm, ranch, or local shipping point, must be prepared by either. The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

(1) Name and address of seller.

(2) Date of sale. In case the producer's shipment to a marketing agency is sold in parts within a marketing year, the date when final settlement is made within that marketing year for the mohair that was sold within that marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place.

(3) The net weight of mohair sold on a grease basis. If the mohair was sold as scoured, the original grease weight must be shown as well as the scoured weight.

(4) Except as otherwise provided in paragraph (a)(5) of this section, the gross sales proceeds or sufficient information from which the gross sales proceeds can be determined.

(5) Marketing deductions, if any (see § 1468.109(b)), except as otherwise provided in this subparagraph. The marketing deductions may be itemized or they may be shown on the sales document as a composite figure for all marketing charges with an explanation of what services are included in that figure. If it is the practice of a marketing agency to show on the sales document only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

> The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services:
>
> ______________________________
>
> Details of these charges will be furnished on request.

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges and will thus diminish the net proceeds on which the payment is computed. Association dues are to be considered marketing deductions if they include compensation for marketing services.

(6) Net proceeds after marketing deductions. If a sales document contains a figure for net proceeds after marketing deductions computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the mohair, is unable to sell the mohair for a higher price, and therefore settles with the producer on the basis of such guaranteed minimum price, the sales document should be on the basis of guaranteed minimum price, regardless of a lower price at which the agency may sell the mohair. In such a case, the marketing agency may indicate on the sales document that the price is the guaranteed minimum sales price.

(7) Additional deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the mohair.

(8) The amount paid to the seller of the mohair on a grease basis.

(9) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(10) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(11) A sales document issued by a marketing agency and covering sales made on various dates within a specified marketing year shall contain a statement that the mohair was marketed during that marketing year.

(12) A sales document covering mohair exchanged for merchandise or services (§ 1468.107(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of mohair at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

(1) Name and address of seller.

(2) Date of sale.

(3) The net weight of mohair sold on a grease basis. If the mohair was sold as scoured mohair, the original grease weight must be shown as well as the scoured weight.

(4) Net amount received by the seller for the mohair at the farm, ranch, or local shipping point.

(5) Any applicable nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the mohair.

(6) Name and address of the purchaser.

(7) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(8) A sales document covering mohair exchanged for merchandise or services (§ 1468.107(d)) shall contain a clear statement that the transaction is an exchange rather than a cash sale.

[43 FR 9456, Mar. 8, 1978, as amended at 50 FR 47034, Nov. 14, 1985]

GENERAL PROVISIONS

§ 1468.112 Filing application for payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the ASCS county office serving the county where the headquarters of the producer's farm or ranch, as the case may be, is located. If the producer has more than one farm or ranch, with headquarters in more than one county, separate applications for payments shall be filed with the ASCS county office serving each such headquarters covering only the mohair produced at each such farm or ranch, except that if the producer sells the entire clip of mohair in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application(s) for payment on mohair in any one of those ASCS county offices. In the event all business transactions are conducted from the producer's residence or office and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) *Time of filing.* An application for payment shall be filed as soon as possible after completion of the producer's sales of mohair in a specified marketing year, but in no event shall an application be filed later than 3 years after the end of that specified marketing year.

§ 1468.113 Signature of applicant.

No payment will be made unless an application for payment on mohair is signed. Each person who signs an application for payment in a representative or fiduciary capacity as agent, attorney-in-fact, officer, executor, etc., must be properly authorized to sign in such capacity.

§ 1468.114 Joint applicants.

When the applicant for a mohair payment is a joint producer of the mohair, all of the joint producers (except those who sign a release as provided below in this section) must sign an application based on the sale of such mohair regardless of whether the mohair was divided among such producers prior to sale or was sold without division. CCC will not be responsible for a division among the applicants of a payment made to all of them jointly. When the application shows such joint production and one or more of the joint producers refuses to join in the application, if each such joint producer signs a form prescribed by CCC releasing CCC from any obligation to make a payment to such a joint applicant, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release(s) shall be attached to the application. When any joint producer is entitled to join in an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1468.115 Disability.

(a) If a producer who is otherwise eligible to receive a payment under this subpart dies, disappears, or is declared incompetent, before marketing the mohair or before filing an application, the successors or representatives authorized to receive payment in the order of precedence set forth in part 707 of this title may complete the eligibility requirements and make application for such payment on Form CCC-1155. The applicant shall also file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," in accordance with Part 707 of this title.

(b) If a producer who earned a payment under this subpart and filed an application therefor dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment or after CCC has issued a draft in payment but before the draft is negotiated, the successors or representatives authorized to receive such payment in the order of precedence set forth in Part 707 of this title may apply therefor on Form ASCS-325, in accordance with Part 707 of this title.

(c) If an Indian who is incompetent earned a payment under this subpart, an application therefor may be filed on the Indian's behalf by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the ASCS county office where the headquarters of the Indian's farm or ranch is located.

(d) In all other cases of disability, including bankruptcy and dissolution, payments will be made to a representative only in accordance with specific directions issued by CCC.

§ 1468.116 Payment.

(a) Payment will be made under this subpart after the ASCS county office has reviewed the application and attached supporting documents and has approved payment in whole or in part, and after the appropriate rate of payment for the specified marketing year has been announced by the Department of Agriculture.

(b) Payments under this subpart shall be made only on the basis of the net sales proceeds received for mohair. No payment shall be made on that part of any sale which has been canceled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a mohair growers association (as distinguished from a cooperative marketing association) by its producer-members on the basis of net sales proceeds in excess of the fair market value of the mohair (grease basis) as determined by CCC.

(c) If it is determined by the ASCS State or county office that an applicant knowingly made a false statement in the application, no payment shall be made with respect to such application.

(d) If CCC subsequently determines that available evidence does not sustain the applicant's right to all or any part of the payment made, the amount of the payment not so sustained shall immediately become due and repayable to CCC, and CCC may, without limitation upon any of the Government's rights in the matter, deduct such amount from any other payment due the applicant under this subpart. If the right to such amount becomes involved in a lawsuit between the Government and the applicant or the assignee, the applicant or the assignee shall have the burden of proving that the applicant was entitled to such amount.

(e) If the ASCS county office rejects in whole or in part an application for payment on mohair, or, after a payment has been made, determines that the available evidence does not sustain the applicant's right to the payment or any part thereof, the ASCS county office shall mail a notice to the applicant, or, in the case of a joint application, to each applicant, that the application has been rejected, specifying the reason therefor, or that the available evidence does not sustain the applicant's right to the payment or any part thereof, as the case may be.

§ 1468.117 Deductions for promotion.

If the Department of Agriculture has approved deductions for an advertising and sales promotion program in accordance with section 708 of the National Wool Act of 1954, as amended, the rate of such deductions for the specified marketing year will be announced and the appropriate deduction will be made from each payment due under this subpart for such specified marketing year.

§ 1468.118 Set off.

If the county office records show that the producer is indebted to CCC, to any other agency within the U.S. Department of Agriculture, or to any other agency of the United States, such indebtedness will be set off against the payment due to the producer in accordance with Part 13 of this title.

§ 1468.119 Liens on goats or mohair.

If a producer grants a lien on the goats or mohair, such lien shall not be deemed to extend to payments made to the producer pursuant to this subpart.

§ 1468.120 Requests for reconsideration and appeals.

Any applicant who is notified that the application has been rejected in whole or in part, or that any other action has been taken by the ASCS county office which unfavorably affects a payment, may obtain reconsideration and review of the determination in accordance with Part 780 of this title. In the request for reconsideration, the applicant shall identify the application by number and date. When a joint application is involved, the request for reconsideration and review may be filed by all applicants jointly or by any of the applicants, in which case it shall be considered a request in behalf of all the joint applicants.

§ 1468.121 Assignments.

(a) *Form.* An assignment of a payment due or to become due under this subpart on mohair may be given to a financing agency or a mohair marketing agency as security for cash advanced or to be advanced on goats or mohair. The assignee shall not reassign such payments. An assignment may only include payments due or to become due on the sale of mohair for a specified marketing year and must include all such payments due and to become due for that specified marketing year. The assignment shall be executed by the producer, or in the case of joint producers by all such producers, on Form CCC-1157 "Assignment of Payment Under the National Wool Act of 1954." The producer's signature shall be witnessed by a member of the county or community ASC committee, for the county where the farm is located, or by an employee of the county committee.

(b) *Payment.* CCC will make payment pursuant to an accepted assignment unless the ASCS county office is furnished evidence that the assignment has been released by the assignee.

§ 1468.122 Records and inspection thereof.

(a) The applicant for a payment under this subpart, as well as the marketing agency and any other person who furnishes evidence to such applicant for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the mohair on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall maintain books, records, and accounts pertaining to the production and sheering of mohair, with respect to which the applicant applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place.

(b) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

(c) At all times during the regular business hours, authorized representatives of CCC or USDA shall have access to the premises of the applicant, of the marketing agency, and of the person who furnished evidence to an applicant for use in connection with the application, in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraphs (a) and (b) of this section.

§ 1468.123 Violations of program.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to enable an applicant to obtain a payment to which such person is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false sales document or the making of a false statement in an application for payment or other document, for the purpose of enabling the applicant to obtain a payment to which such person is not entitled, will subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1468.124 Forms.

Form CCC-1155, "Application for Payment (National Wool Act)," Form CCC-1157, "Assignment of Payment Under the National Wool Act of 1954," Form ASCS-325, "Application for payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," and other forms issued by the U.S. Department of Agriculture for use in connection with this program may be obtained from ASCS county offices.

§ 1468.125 Authorization by Executive Vice President, CCC, or other official.

If the applicant is unable to furnish the documentary evidence of sale required by this subpart, the Executive Vice President, CCC, or the Deputy Administrator, State and County Operations, ASCS, may authorize the submission of other evidence which establishes to the satisfaction of the authorizing official the information required by § 1468.111.

§ 1468.126 Expiration of time limitations.

Whenever the final date for filing an application falls on a Saturday, Sunday, national holiday, or State holiday, or on any other day on which the appropriate ASCS State or county office is not open for the transaction of business during normal working hours, the time for filing the application shall be extended to the close of business on the next working day. If the filing is by mail, it shall be considered timely if it is postmarked by midnight of such next working day.

§ 1468.127 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1468) have been approved by the Office of Management and Budget (OMB) under the provisions of

44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0023.

[50 FR 47034, Nov. 14, 1985]

PART 1472—WOOL

Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982-1985)

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Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982-1985)

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702-708, 68 Stat. 910-912, as amended (7 U.S.C. 1781-1787).

SOURCE: 43 FR 9462, Mar. 8, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 1472.1501 General.

This subpart sets forth the policies, procedures, and requirements governing price support payments by the Commodity Credit Corporation (referred to in this subpart as "CCC"), for shorn wool and unshorn lambs (pulled wool) for the 1982, 1983, 1984, and 1985 marketing years.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1502 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. In the field, the program will be administered through the ASCS State and county offices. ASCS State and county offices do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto unless the power to modify or waive is expressly included in the pertinent provisions.

§ 1472.1503 Announcement of price support level.

Pursuant to the National Wool Act of 1954, as amended, the Secretary of Agriculture shall announce a price support level for wool which has been determined to meet the requirements of the Act for each of the four marketing years, 1982, 1983, 1984, and 1985. Such support price level shall, to the extent practicable, be announced sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1504 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"*Deputy Administrator*" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"*Family member*" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

"Financing agency" means any bank, turst company, or Federal lending agency. It also includes any other financing institution which customarily makes loans or advances to finance production of sheep, lambs, or wool.

"*Grease wool*" means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

"Joint owners" means two or more persons who own the wool or lambs in question, regardless of the special nature of their relationship or how it came into being, and shall include owners in common.

"Joint producers" means two or more producers who are joint owners of shorn wool or unshorn lambs, or who are producers of shorn wool or unshorn lambs under a caretaking agreement pursuant to which one producer owns the sheep or lambs and the other producer furnishes labor in connection with lamb or wool production in return for which the producer is entitled to share either in the wool or lambs produced or in the proceeds from the sale of such wool or lambs.

"Lamb" means a young ovine animal which has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

"Liveweight" is the weight of live lambs which a producer purchases or sells. In the event the price for the lambs is based on weight, the weight actually used in determining the total amount payable shall be considered the liveweight.

"Local shipping point" means the point at which the producer delivers wool to a common carrier for further transportation, or if the wool is not delivered to a common carrier, the point at which a producer delivers it to the marketing agency or a purchaser. The term "common carrier" includes any carrier that serves the public in transporting goods for hire whether or not such carrier is required to be licensed by some Government authority to do so.

"Marketing agency" with reference to shorn wool means a person who sells a producer's wool for the producer's account, and with reference to lambs, it means a commission firm, auction market, pool manager, or any other person who sells lambs for the account of a producer.

"Marketing year" means the period beginning January 1 and ending the following December 31, both dates inclusive.

"Person" means an individual, partnership, association, business trust, corporation, or any organized unincorporated group of individuals, and includes a State and any subdivision thereof.

"Producer" of shorn wool means a person who either owns, individually or jointly, the sheep or lambs from which the wool is shorn or is a joint producer of the wool under a caretaking agreement as described in paragraph (b) of this section. "Producer" of lambs means a person who either owns the lambs, individually or jointly, or is a joint producer of the lambs under a caretaking agreement as described in paragraph (b) of this section.

"*Sales document*" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn wool or unshorn lambs to the purchaser.

"*Shorn wool*" means grease wool sheared from live sheep or lambs, including black wool, tags, crutchings, and murrain or other wool removed from dead animals. Shorn wool does not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

"Slaughterer" means a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.

"Specified marketing year" is the marketing year as to which the Department of Agriculture has announced that marketings of shorn wool and unshorn lambs by a producer during that year will entitle the producer to a payment under this program.

"Unshorn lambs" means lambs which have never been shorn.

"*Wool*" means, unless otherwise indicated, shorn wool.

"*Wool price support payment rate*" means the percentage required to bring the national average price received by all producers for the sale of shorn wool up to the support price.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34081, Aug. 23, 1985]

SHORN WOOL

§ 1472.1505 Price support payments.

(a) *General.* With respect to each specified marketing year, price support payments on shorn wool marketed in each marketing year will be made available to producers in accordance with the provisions of this subpart.

(b) *Announcement of wool price support payment rate.* The wool price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee at the end of each specified marketing year.

[50 FR 34082, Aug. 23, 1985]

§ 1472.1506 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn wool under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1472.1544, the applicant must be the producer of shorn wool. In the case of a joint application for payment, each applicant must be a producer of shorn wool which is marketed in accordance with the provisions of § 1472.1507(c).

(c) The wool must have been shorn in the United States. If wool is shorn from imported sheep or lambs while they are held in quarantine in connection with their importation into the United States, such wool shall not be considered to have been shorn in the United States.

(d) The producer, or in the case of joint producers, at least one of the producers must have owned the wool at the time of shearing and must have owned in the United States the sheep or lambs from which the wool was shorn for not less than 30 days at any time prior to the filing of the application. Ownership of wool or animals as used in this paragraph does not include the ownership which in some States is held by a person having a security interest, such as a mortgage or other lien. If sheep or lambs are imported into the United States, the 30-day period of required ownership shall begin after their importation and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(e) Beneficial interest in the wool must always have been in the producer from the time the wool was shorn up to the time of its sale. A producer has beneficial interest in wool (1) when the producer owns it and has not authorized any other person to sell or otherwise dispose of it, or (2) when the producer has, by transfer of legal title to such other person or otherwise, authorized another person to sell or otherwise dispose of the wool but continues to be entitled to the proceeds from any such sale or other disposition thereof. Such beneficial interest is not changed by a mortgage or other lien on the wool.

(f) The applicant shall either report purchases of unshorn lambs as required by § 1472.1511 (a)(1) or (b)(1), or make the statement provided for in § 1472.1511 (a)(2) or (b)(2).

(g) Payments will not be made on the marketing of wool shorn from imported sheep or lambs if the permit for the importation of the sheep or lambs or a communication connected with such permit, issued by the Animal and Plant Health Inspection Service of this Department states that the importation is for slaughter.

(h) Payments made in accordance with this subpart shall only be made with respect to bona fide marketings of shorn wool. The sale of shorn wool which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1472.1510(a)(3), or any other process or act that results in a wool product, as determined by the Deputy Administrator, is not eligible for payment under this subpart.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34082, Aug. 23, 1985]

§ 1472.1507 Bona fide marketing within a specified marketing year.

(a) Marketing shall be deemed to have taken place in a specified marketing year if, pursuant to a sale or contract to sell in the process of marketing, the last of the following three events, in whatever order they occur, was completed in that marketing year:

(1) Title passed to the buyer; (2) the wool was delivered to the buyer (physically or through documents which transfer control to the buyer); and (3) the last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer is known to the applicant's purchase price payable by the buyer is known to the applicant's marketing agency, or is known to the applicant, if the applicant markets directly. In addition, the full amount due the producer in connection with the marketing of wool must be paid to the producer in cash, merchandise, or services rendered before the producer may include it in the application for payment.

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that: (1) The producer acted in good faith in marketing the wool; (2) a bona fide marketing occurred; (3) the wool was not returned to the producer; (4) the producer was not aware and had no reason to suspect that the document tendered in payment for the wool was not worth its face value at the time of acceptance of the document, and (5) the producer made a diligent effort to obtain payment for the wool from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1472.1508 shall not exceed the fair market value of the wool as determined by the Deputy Administrator.

(c) For the purpose of determining the amount of a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool in exchange for a specific amount of money for each pound of wool tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool by a producer shall constitute a bona fide marketing if: (1) The wool is sold to a person or business which normally buys wool; (2) the producer selling the wool does not sell the wool to a family member or to any business in which the producer has more than a 20 percent interest; (3) the sale is based on a reasonably appraised price for wool; and (4) the person or business buying the wool is also engaged in the business of buying and selling grease basis wool and buys the wool in the course of that business.

(d) The exchange of wool for merchandise or services of a nature other than wool or wool product will be considered as a bona fide marketing if a definite price for the wool is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such wool, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1472.1508.

(e) The delivery of wool on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee. Notwithstanding the foregoing, wool delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency: (1) Has guaranteed a minimum sales price; (2) is unable to sell the wool for more than the minimum sales price, and (3) takes possession of the wool at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the wool when the wool has been transferred to a marketing agency and the producer provides that such agency shall market the wool and that the producer shall be entitled to the proceeds of such marketing.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34082, Aug. 23, 1985]

§ 1472.1508 Computation of payment.

(a) The amount of the payment due a producer shall be computed by applying the rate of payment to the net sales proceeds for the wool marketed during the specified marketing year. The resultant amount shall be reduced, because of the purchase by the producer of unshorn lambs, by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the announced rate of payment on unshorn lambs during said marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or future years.

(b) Except as provided in § 1472.1510(a)(6) with respect to a guaranteed minimum sales price, the net sales proceeds shall be determined by deducting from the gross sales proceeds of the wool all marketing expenses, such as any charges paid by or for the account of the producer for transportation, handling (including commissions), grading, scouring, or carbonizing. The figure so arrived at will express the net proceeds received by the producer at the farm, ranch, or local shipping point. Charges for wool bags or storage, as well as any other charges not directly related to the marketing of the wool such as interest on advances, shall not be considered marketing charges.

(c) All applications filed by a producer in the same county office for payments due on wool marketed during the specified marketing year shall be considered together for the purpose of determining the total net amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1472.1509 Preparation of application.

(a) *Preparation.* The application for payment on the sale of shorn wool shall be prepared on Form CCC-1155, "Application for Payment (National Wool Act)." Marketing agencies may assist producers in filling out applications by inserting the information on sales of shorn wool and sending the sales documents to the appropriate ASCS county office, but the producer must sign the application and is responsible for the requirements as to the time and manner of filing the application. If the producer paid marketing charges not shown on the sales document, such charges shall be considered with the marketing charges shown on the sales document covering the wool sold.

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of wool. The processing of shorn wool by a process or act which, as determined by the Deputy Administrator, produces a wool product, shall make the wool ineligible for a price support payment. Payment shall not be made on marketings of wool products, including items identified as yarn, wool yarn, skeins, or novelty items. Trimming, skirting and cleaning by scouring or carbonizing, provided the grease basis weight is established, does not make the wool ineligible for a price support payment.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain within the ASCS county office, the applicant may submit a photostat, carbon, or other copy of the original document. However, the applicant must show the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant, who shall retain it in accordance with § 1472.1551.

(d) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm preparing the sales document to furnish a carbon or photostat copy to the seller in place of the original, the producer may submit that copy in support of the application, provided the copy bears a signature, in accordance with § 1472.1510 (a)(10), of the person or of the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purposes mentioned in this section.

(e) *Lost or destroyed sales documents.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the buyer or the applicant's marketing agency, and such certified copy shall be treated as an original for the purposes mentioned in this section.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34083, Aug. 23, 1985]

§ 1472.1510 Contents of sales documents.

The sales documents attached to each application for an incentive payment must contain a final accounting and meet the requirements of paragraph (a) or (b) of this section, for the wool covered by the sales document. Contracts to sell as well as tentative or pro forma settlements will not be acceptable as sales documents meeting such requirements. Except as provided in § 1472.1544, sales documents must cover wool sold by the producer.

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of wool at the producer's farm, ranch, or local shipping point, must be prepared by either: The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

(1) Name and address of seller.

(2) Date of sale. In case the producer's shipment to a marketing agency is sold in parts within a marketing year, the date when final settlement is made within that marketing year for the wool that was sold within the marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place.

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

(4) Except as otherwise provided in paragraph (a)(5) of this section, the gross sales proceeds or sufficient information from which the gross sales proceeds can be determined.

(5) Marketing deduction, if any (see § 1472.1508(b)), except as otherwise provided in this subparagraph. The marketing deductions may be itemized or they may be shown on the sales document as a composite figure for all marketing charges with an explanation of what services are included in that figure. If it is the practice of a marketing agency to show, on the sales document, only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows:

"The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services: ———. Details of these charges will be furnished on request."

All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges and thus diminish the net proceeds on which the incentive payment is computed. Association dues are to be considered marketing deductions if they include compensation for marketing services.

(6) Net proceeds after marketing deductions. If a sales document contains a figure for net proceeds after marketing deductions, computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have been computed. If a marketing agency has guaranteed a minimum sales price for the wool, is unable to sell the wool for a higher price, and therefore settles with the producer on the basis of such guaranteed minimum price, the sales document should be on the basis of that guaranteed minimum price regardless of a lower price at which the agency may sell the wool. In such a case, the marketing agency may indicate on the sales document that the price is the guaranteed minimum sales price.

(7) Additional deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the wool.

(8) The amount paid to the seller of the wool on a grease basis.

(9) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(10) *Signature.* The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(11) A sales document issued by a marketing agency and covering sales made on various dates within a specified marketing year shall contain a statement that the wool was marketed during the marketing year.

(12) A sales document covering wool exchanged for merchandise or services (§ 1472.1507(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of wool at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

(1) Name and address of seller.

(2) Date of sale.

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

(4) Net amount received by the seller for the wool at the farm, ranch, or local shipping point.

(5) Any applicable nonmarketing deductions, such as charges for bags, storage, interest, association dues which do not include compensation for marketing services, or other charges not directly related to the marketing of the wool.

(6) Name and address of the purchaser.

(7) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(8) A sales document covering wool exchanged for merchandise or services (§ 1472.1507(d)), shall contain a clear statement that the transaction is an exchange rather than a cash sale.

[43 FR 9462, Mar. 8, 1978, as amended at 50 FR 34083, Aug. 23, 1985]

§ 1472.1511 Report of purchases of unshorn lambs.

(a) *Report on actual basis.* (1) If the application includes wool removed in the first shearing of lambs purchased unshorn, and the applicant is able to identify the lambs from which such wool was shorn, the applicant shall report the number and liveweight of such lambs at time of purchase, including those from which wool was removed after death.

(2) If the applicant knows that the application does not include any wool which was removed in the first shearing of lambs purchased unshorn, the applicant shall state that there are no purchases of unshorn lamb related to the sale of such wool.

(b) *Report on "first in, first out" basis.* (1) If an applicant does not know whether the application includes wool removed in the first shearing from lambs purchased unshorn, or an applicant knows that such wool is included but is unable to identify the lambs from which such wool was shorn, the applicant shall report on a "first, in, first out" basis, that is, in chronological order, the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of sheep and lambs from which wool was shorn and included in the application. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on shorn wool and for payments on unshorn lambs until the applicant has accounted for all lambs purchased unshorn on or after April 1, 1956, not reported in previous applications. However, the applicant need not report those lambs with respect to which the applicant can show no application has been made for a payment for the 1956 or a subsequent marketing year on their sale or on the sale of wool shorn from them.

(2) If the application for payment on the sale of shorn wool is made after an applicant has accounted for the total purchases of unshorn lambs, the applicant shall state that there are no purchases of unshorn lambs related to such sale.

(c) *Imported lambs.* If purchased lambs which the applicant is required to report were imported, the liveweight required to be reported shall be the liveweight of the lamb at the time of import, or if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweights as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(d) *Additional information.* The applicant shall furnish any additional details requested by ASCS State and county offices concerning any report made pursuant to this section.

UNSHORN LAMBS (PULLED WOOL)

§ 1472.1521 Price support payments.

(a) *Level of payments.* For each marketing year, price support will be furnished on pulled wool at such level, in relationship to the support price for shorn wool, as the Secretary determines will maintain normal marketing practices for pulled wool, by means of payments to the producer in accordance with this subpart on live unshorn lambs that are sold or moved to slaughter in a specified marketing year. Payments will not be made on the sale of the pelts of sheep or lambs or wool removed from such pelts.

(b) *Rate of payment.* The rate of payment will be 80 percent of the difference between the national average price per pound received by producers for shorn wool during a specified marketing year and the support price per pound of shorn wool multiplied by the average weight of wool per hundredweight of animals (5 pounds). The exact rate of payment will be determined and announced, after the end of that marketing year, as a specified amount per hundredweight of live animals.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1522 Eligibility for payments.

Before payments under this program can be approved pursuant to an application covering any lot or lots of lambs, the following requirements must be satisfied:

(a) Except as provided in § 1472.1544, the applicant must be the producer, and in the case of a joint application each applicant must be a producer, of the lambs.

(b) The producer, or in the case of joint producers, at least one of the producers must have owned the lambs for 30 days or more in the United States and title must have passed to the buyer within the specified marketing year. If a slaughterer is to qualify for a payment, the slaughterer must have owned the lambs for 30 days or more in the United States prior to their moving to slaughter and they must have moved to slaughter within the specified marketing year. Ownership of lambs, as used in this paragraph, does not include the ownership which in some States is held by a person having a security interest, such as a mortgage or other lien. If lambs are imported into the United States, the 30-day period of required ownership shall begin after their importation, and, if they were quarantined in connection with such importation, the period shall begin after their release from quarantine.

(c) The lambs must never have been shorn at the time of sale, or, in the case of an application by a slaughterer, at the time of moving to slaughter.

(d) The applicant shall either report purchases of unshorn lambs as required by § 1472.1526 (a)(1) or (b)(1), or make the statement provided for in § 1472.1526 (a)(2) or (b)(2).

(e) Payments will not be made on the marketing of imported lambs if the permit for the importation of the lambs or a communication connected with such permit, issued by the Animal and Plant Health Inspection Service of this Department, states that the importation is for slaughter.

(f) Payments under this subpart shall only be made on bona fide marketings in a specified marketing year.

§ 1472.1523 Computation of payment.

(a) The amount of the payment due to an applicant shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the applicant of unshorn lambs, by the liveweight of such lambs reported in the application for payments. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or future years.

(b) All applications filed by a producer in the same county office for payments due on unshorn lambs marketed or moved to slaughter during the specified marketing year shall be considered together for the purpose of determining the total net amount of payment due. All such applications filed in different county offices may be considered together in determining such total payment.

§ 1472.1524 Preparation of application.

(a) *Preparation.* The application for payment on the sale or slaughter of unshorn lambs shall be made on Form CCC-1155, "Application for Payment (National Wool Act)."

(b) *Supporting documents.* The application for payment on the sale of unshorn lambs shall be supported by the original sales documents covering the sale. The application for payment on the slaughter of unshorn lambs shall be supported by the scale ticket covering the movement to slaughter.

(c) *Original sales document retained.* If the applicant does not wish the original sales document to remain with ASCS county office, the applicant may submit a photostat, carbon, or other copy of the original document. However, an applicant must show the original document to the ASCS county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant. The applicant is required to retain it in accordance with § 1427.1551.

(d) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm preparing the sales document to furnish a carbon or photostat copy to the seller in place of the original, the applicant may submit that copy in support of the application, provided the copy bears a signature in accordance with § 1472.1525(a)(6), of the person or the representative of the firm preparing the original sales document. Such copy shall be treated as an original for the purpose mentioned in this section.

(e) *Lost or destroyed sales document.* If the original sales document or scale ticket has been lost or destroyed, the applicant may submit a copy, certified by the person who issued the original, and such certified copy shall be treated as an original for the purposes mentioned in this section.

§ 1472.1525 Contents of sales documents and scale tickets.

(a) *Sales documents.* Each sales document supporting an application must cover lambs sold by the producer except as provided in § 1472.1444, must be issued by the purchaser or the producer's marketing agency, and must show the following:

(1) Name and address of seller.

(2) Date of sale.

(3) Number of unshorn lambs sold. If the sales document does not clearly identify the animals as lambs that had never been shorn at the time of sale, the person issuing the sales document shall add a statement to that effect. If the sales document refers to the animals as "unshorn lambs," this will indicate that the lambs were never shorn. If the document issued in connection with the sale of unshorn lambs also covers the sale of other animals, the person preparing the sales document shall clearly indicate therein the number and the liveweight of unshorn lambs included in the sale.

(4) Liveweight of unshorn lambs sold. If the weight is not determined by scales, this weight may be an estimated weight agreed to by the purchaser and the producer.

(5) Name and address of the purchaser or marketing agency, whichever issues the sales document.

(6) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by the last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(b) *Scale tickets.* The scale ticket supporting an application must cover unshorn lambs moved to slaughter by the applicant and must show the information normally appearing on scale tickets issued by stockyards (that is, date, number of head, classification(s), weight by classification, scale ticket number, if any, place of weighing, and name of weigher).

§ 1472.1526 Report on purchases of unshorn lambs.

(a) *Report on actual basis.* (1) If the application is based on the sale or slaughter of lambs purchased unshorn and the applicant is able to identify such lambs, the applicant shall report the number of lambs purchased and their liveweight at the time of purchase.

(2) If the applicant knows that the application is not based on the sale or slaughter of such lambs purchased unshorn, the applicant shall state that there are no purchases of unshorn lambs related to the sale or slaughter of such lambs.

(b) *Report on "first in, first out" basis.* (1) If an applicant does not know whether the application is based on the sale or slaughter of lambs purchased unshorn, or knows that such lambs are included but is unable to identify such lambs, the applicant shall report on a "first in, first out" basis, that is, in chronological order, the number and liveweight at the time of purchase of a quantity of lambs purchased unshorn equal to the number of lambs on which the application is based. This reporting of purchased lambs shall be continued in applications for the current and subsequent marketing years for payments on unshorn lambs and shorn wool until the applicant has accounted for all lambs purchased unshorn on or after April 1, 1956, not reported in previous applications. However, the applicant need not report any lambs when it can be shown that no application has been made for a payment for the 1956 or a subsequent marketing year on their sale or on the sale of wool shorn from them.

(2) If the application for payment on the sale or slaughter of unshorn lambs is made after an applicant has accounted for the total purchases of unshorn lambs, the applicant shall state that there are no purchases of unshorn lambs related to such sale or slaughter.

(c) *Imported lambs.* If purchased lambs which the applicant is required to report were imported, the liveweight required to be reported shall be the liveweight of the lambs at the time of import, or, if they were quarantined in connection with the importation, at the time of release from quarantine. For the purpose of reporting imported lambs, whether they were purchased or raised by the producer, they shall be treated as if they had been purchased. Any report in an application of purchased lambs and their liveweight as required by this paragraph shall be deemed to include lambs both purchased and raised by the producer.

(d) *Additional information.* The applicant shall furnish any additional details requested by ASCS State and county offices concerning any report made pursuant to this section.

GENERAL PROVISIONS

§ 1472.1541 Filing application for payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the ASCS county office serving the county where the headquarters of the producer's farm, ranch, or feed lot, as the case may be, is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate applications for payment shall be filed with the ASCS county office serving each such headquarters covering only the wool and lambs produced at each such farm, ranch, or feed lot, except that:

(1) If the producer sells the entire clip of wool in a single sale or if the entire clip is sold for the producer's account by one marketing agency, the producer may file the application(s) for payment on shorn wool in any one of those ASCS county offices, or (2) if the producer includes in one sale unshorn lambs that were ranged, pastured, or fed in more than one county, the producer may file the application(s) for payment on such lambs in any one of those ASCS county offices. In the event all business transactions are conducted from the producer's residence or office, and the farm or ranch has no other headquarters, the office or residence may be considered the farm or ranch headquarters.

(b) *Time of filing.* An application for payment shall be filed as soon as possible after completion of the sales of shorn wool or unshorn lambs for the specified marketing year, or in the case of slaughter, as soon as possible after the last of the lambs moved to slaughter in the specified marketing year, but in no event shall an application be filed later than 3 years after the end of the specified marketing year.

(c) *Withdrawal or amendment of application for payment on shorn wool.* (1) An applicant may request permission from the ASC county committee to withdraw an application for payment on shorn wool which constitutes the full first shearing of purchased unshorn lambs when, as a result of such application containing the necessary report of purchases of unshorn lambs on an "actual basis," there is excess liveweight carried forward which would be used to reduce payment in the current or future marketing years. An applicant may also request permission to amend the application by omitting sales of those lots of wool constituting the full first shearing of purchased unshorn lambs reported on an "actual basis." These requests must be accompanied by such supporting evidence as may be required by the ASC county committee. If the application was signed jointly by two or more producers, the request for withdrawal or amendment must be signed by each such producer. To be considered a full shearing, the wool must constitute the complete fleece, and not merely tags, clippings, trimmings around the eyes, or other off-wools.

(2) If the ASC county committee is satisfied that the conditions described in paragraph (c)(1) of this section exist, the committee may grant the request. If the applicant has filed additional shorn wool applications in other ASCS county offices, the request may be granted only if it is determined that such additional applications do not include any wool removed in the full first shearing of the lambs which will not be reported as a result of the withdrawal or amendment.

§ 1472.1542 Signature of applicant.

No payment will be made unless an application for payment on shorn wool or unshorn lambs is signed. Each person who signs an application for payment in a representative or fiduciary capacity as agent, attorney-in-fact, officer, executor, etc., must be properly authorized to sign in such capacity.

§ 1472.1543 Joint applicants.

When the applicant for a shorn wool payment is a joint producer of the wool, all of the joint producers (except those who sign a release as provided below in this section) must sign any application based on the sale of such wool regardless of whether the wool was divided among such producers prior to sale or was sold without division. When the applicant for a payment of unshorn lambs is a joint producer of the lambs, all of the joint producers (except those who sign a release as provided below in this section) must sign any application based on the sale of such lambs regardless of whether the lambs were divided among such producers prior to sale or were sold without division. CCC will not be responsible for a division among the applicants of a payment made to all of them jointly. When the application shows such joint production, and one or more of the joint producers refuse to join in the application, if each such joint producer signs a form prescribed by CCC releasing CCC from any obligation to make a payment to such a joint producer, CCC shall make payment of the amount due the remaining joint producers who sign the application. Such release(s) shall be attached to the application. When any joint producer is entitled to join in an application but fails to do so, and the application does not show this interest as a joint producer, the producer shall have no claim against CCC for any portion of the payment made pursuant to the application.

§ 1472.1544 Disability.

(a) If a producer who is otherwise eligible to receive a payment under this subpart dies, disappears, or is declared incompetent, before marketing the shorn wool or unshorn lambs or before filing an application, the successors or representatives authorized to receive payment in the order of precedence set forth in Part 707 of this title may complete the eligibility requirements and make application for such payment on Form CCC-1155. The applicant shall also file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," in accordance with Part 707 of this title.

(b) If a producer who earned a payment under this subpart and filed an application therefor dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment or after CCC has issued a draft in payment but before the draft is negotiated, the successors or representatives authorized to receive such payment in the order of precedence set forth in Part 707 of this title may apply therefor on Form ASCS-325, in accordance with Part 707 of this title.

(c) If an Indian who is incompetent earned a payment under this subpart, an application therefor may be filed on behalf of the Indian by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. Such application for payment will be filed in the ASCS county office where the headquarters of the Indian's farm or ranch is located.

(d) In all other cases of disability, including bankruptcy dissolution, payments will be made to a representative only in accordance with specified directions issued by CCC.

§ 1472.1545 Payment.

(a) Payment will be made under this subpart after the ASCS county office has reviewed the application and attached supporting documents and has approved payment in whole or in part, and after the appropriate rate of payment for the specified marketing year has been announced by the Department of Agriculture.

(b) Payments under this subpart shall be made only on the basis of the net sales proceeds received for shorn wool and on the liveweight of lambs sold or moved to slaughter. No payment shall be made on that part of any sale which has been cancelled or on the basis of prices or weights which have been fraudulently increased for the purpose of obtaining higher payments. No payment shall be made on sales to a wool growers association (as distinguished from a cooperative marketing association) by its producer-members on the basis of net sales proceeds in excess of the fair market value of the wool (grease basis) as determined by CCC.

(c) If it is determined by the ASCS State or county office that an applicant knowingly made a false statement in the application, including failure to report accurately purchases of unshorn lambs, no payment shall be made with respect to such application.

(d) If CCC subsequently determines that available evidence does not sustain the applicant's right to all or any part of a payment made, the amount of the payment not so sustained shall immediately become due and repayable to CCC, and CCC may, without limitation upon any of the Government's rights in the matter, deduct such amount from any other payment due the applicant under this subpart. If the right to such amount becomes involved in a lawsuit between the Government and the applicant or the assignee, the applicant or the assignee shall have the burden of proving that the applicant was entitled to such amount.

(e) If the ASCS county office rejects in whole or in part an application for payment on shorn wool or unshorn lambs, or, after a payment has been made, determines that the available evidence does not sustain the applicant's right to the payment or any part thereof, the ASCS county office shall mail a notice to the applicant, or, in the case of a joint application, to each applicant, that the application has been rejected, specifying the reason therefor, or that the available evidence does not sustain the applicant's right to the payment or any part thereof, as the case may be.

§ 1472.1546 Deductions for promotion.

(a) If the Department of Agriculture has approved deductions for an advertising and sales promotion program in accordance with sections 708 of the National Wool Act of 1954, as amended, the rate of such deductions for the specified marketing year will be announced and the appropriate deduction will be made from each payment due under this subpart for such specified marketing year.

[43 FR 9462, Mar. 8, 1978, as amended at 47 FR 16162, Apr. 15, 1982]

§ 1472.1547 Setoff.

If the county office records show that the producer is indebted to CCC, to any other agency within the U.S. Department of Agriculture, or to any other agency of the United States, such indebtedness will be set off against the payment due to the producer in accordance with Part 1408 of this chapter.

§ 1472.1548 Liens on sheep or wool.

If a producer grants a lien on sheep, lambs, or wool, such lien shall not be deemed to extend to payments made to the producer pursuant to this subpart.

§ 1472.1549 Requests for reconsideration and appeals.

Any applicant, who is notified that the application has been rejected in whole or in part or that any other action has been taken by the ASCS county office which unfavorably affects a payment, may obtain reconsideration and review of the determination in accordance with Part 780 of this title. In the request for reconsideration, the applicant shall identify the application by number and date. When a joint application is involved, the request for reconsideration and review may be filed by all applicants jointly or by any of the applicants, in which case it shall be considered a request in behalf of all the joint applicants.

§ 1472.1550 Assignments.

(a) *Form.* An assignment of a payment due or to become due under this subpart on shorn wool or on unshorn lambs may be given to a financing agency or a wool marketing agency as security for cash advanced or to be advanced on sheep, lambs, or wool. The assignee shall not reassign such payment. One assignment may cover payments due or to become due on the sale of shorn wool or unshorn lambs or both. An assignment may only include payments due or to become due for a specified marketing year and must include all payments due and to become due for that specified marketing year on the commodity or commodities for which payment is being assigned. The assignment shall be executed by the producer or in the case of joint producers by all such producers, on Form CCC-1157, "Assignment of Payment Under the National Wool Act of 1954." The applicant's signature shall be witnessed by a member of the county or community ASC committee for the county where the farm is located, or by an employee of the county committee.

(b) *Payment.* CCC will make payment pursuant to an accepted assignment unless the ASCS county office is furnished evidence that the assignment has been released by the assignee.

§ 1472.1551 Records and inspection thereof.

(a) The applicant for a payment under this subpart, as well as the marketing agency and any other person who furnishes evidence to such applicant for use in connection with the application, shall maintain books, records, and accounts pertaining to the marketing of the commodity on which the application is based, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall maintain books, records, and accounts pertaining to the production of wool, sheep, and lambs and the shearing thereof, with respect to which the applicant applies for payment, for 3 years following the end of the specified marketing year during which the marketing took place. The applicant shall also maintain books, records, and accounts showing the purchases of lambs on or after April 1, 1956, for 3 years following the end of the specified marketing year during which any such lambs have been marketed, as the case may be. If the applicant is required to report purchases of unshorn lambs on a "first in, first out" basis, the applicant shall maintain such books, records, and accounts of such lambs for 3 years following the end of the specified marketing year for which such lambs are to be reported.

(b) If an application is based on the sale of wool shorn from imported sheep or lambs, or on the sale of imported lambs, or it lambs required to be reported as purchased unshorn were imported, the books, records, and accounts required by paragraph (a) of this section to be maintained by the applicant shall show the details of such importation, including the date of arrival of the lambs in the United States and the liveweight on such date, and if the lambs were quarantined, the date when they were released from quarantine and their liveweight on such date.

(c) With respect to any application for payment filed after the end of the specified marketing year, instead of maintaining the books, records, and accounts for the time specified in paragraph (a) of this section, such books, records, and accounts shall be maintained for 3 years following the date on which the application is filed.

(d) At all times during regular business hours, authorized representatives of CCC or the Department of Agriculture shall have access to the premises of the applicant, of the marketing agency, and of the person who furnished evidence to an applicant for use in connection with the application, in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraphs (a), (b), and (c) of this section.

§ 1472.1552 Violations of program.

(a) Whoever issues a false sales document or otherwise acts in violation of the provisions of this program so as to enable an applicant to obtain a payment to which such person is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false sales document or the making of a false statement in an application for payment or other document, for the purpose of enabling the applicant to obtain a payment to which such pereson is not entitled, will subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1472.1553 Forms.

(a) Form CCC-1155, "Application for Payment (National Wool Act)," Form CCC-1157, "Assignment of Payment Under the National Wool Act of 1954," Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," and other forms issued by the U.S. Department of Agriculture for use in connection with this program may be obtained from ASCS county offices.

§ 1472.1554 Authorization by Executive Vice President, CCC, or other official.

If the applicant is unable to furnish the documentary evidence of sale required in this subpart, the Executive Vice President, CCC, or the Deputy Administrator, State and County Operations, ASCS, may authorize the submission of any other evidence which establishes to the satisfaction of the authorizing official the information required by §§ 1472.1510 and 1472.1525.

§ 1472.1555 Expiration of time limitations.

Whenever the final date for filing an application falls on a Saturday, Sunday, national holiday, or State holiday, or on any other day on which the appropriate ASCS State or county office is not open for the transaction of business during normal working hours, the time for filing the application shall be extended to the close of business on the next working day. If filing is by mail, it shall be considered timely if it is postmarked by midnight of such next working day.

§ 1472.1556 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1472) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0023.

[50 FR 34083, Aug. 23, 1985]

PART 1474—FARM STORAGE FACILITIES

Subpart—Farm Facility Loan Program Regulations

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AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 15 U.S.C. 714b, 714c.

Subpart—Farm Facility Loan Program Regulations

§ 1474.1 General statement.

This subpart sets forth the policies, procedures, and requirements governing loans made by the Commodity Credit Corporation (hereinafter referred to as "CCC") for the purchase of farm facilities or remodeling of existing facilities under the Farm Facility Loan Program. Interested persons should refer to related procedures and forms which have been adopted by each State ASC committee to assure compliance with State law. The program may be suspended at any time except in areas where the Secretary has determined that there is a deficiency of storage for grain.

[47 FR 33669, Aug. 4, 1982]

§ 1474.2 Administration.

(a) The Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"), will administer the provisions of this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS. On matters involving individual loans which would otherwise require approval or other action by the Executive Vice President, the Deputy Administrator, State and County Operations, is authorized to give such approval or take such other action as may be necessary. The program will be carried out through Agricultural Stabilization and Conservation State and county committees (hereinafter referred to respectively as "State committee" and "county committee").

(b) Forms will be available in ASCS county offices.

(c) State and county committees and employees thereof do not have authority to waive any of the provisions of this subpart or any amendment thereto. Forms and procedures may b modified to the extent necessary t conform to any requirements of Stat law.

(d) No delegation herein to a Stat or county committee shall preclud the Executive Vice President, CCC, o his designee, from determining an question arising under the program o from reversing or modifying any determination made by a State or count committee.

(e) Except for Forms CCC-185, al documents required to be signed o behalf of CCC in connection wit loans or other related actions unde the Farm Facility Loan Program shal be signed by the chairperson o member of the county committee, o by the county executive director if th county committee has so authorized *However,* all such approvals require for loans or other related actions mus have been given in accordance wit the provisions of this subpart. Wit respect to loans which are approved b the county committee, forms CCC-18 shall be signed by the chairperson or member of the county committe With respect to loans approved by th State committee, forms CCC-185 shal be signed by the chairperson or member of the State committee.

[39 FR 38632, Nov. 1, 1974, as amended at 4 FR 33669, Aug. 4, 1982]

§ 1474.3 Availability of loans.

(a) *Time.* Loan applications will b accepted by county offices only durin the period and for farm storage facilities in such areas as announced by th Secretary.

(b) *Applications for loan.* An application for a loan shall be submitted t the county office of the county i which are maintained the records o the farm or farms to which the application relates. Upon request, the applicant shall furnish such informatio and documents as the State or count committee deem necessary to suppor the application. This may include bu is not limited to financial statement receipted bills, invoices, purchas orders, specifications, drawings o plats. The county office will be responsible for taking appropriate action o the application. Loan disbursements will be made by sight drafts drawn on CCC by the county offices.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33669, Aug. 4, 1982]

§ 1474.4 Eligible borrowers.

(a) *Basic requirements.* The term "eligible borrower" means any person who as landowner, landlord, tenant, or sharecropper (1) Produces one or more of the following commodities, hereinafter called "facility loan commodities": corn, oats, barley, sorghum, wheat, and rice, (2) needs farm facilities for the storage of one or more such commodities, and (3) participates in any acreage reduction program in effect for facility loan commodities used to determine the borrower's needs for the farm facility. If two or more eligible borrowers join together in the purchase of eligible farm storage facilities, each such borrower shall sign all documents, when required, and shall be liable jointly and severally for repayment of the loan to CCC. The term "person" means any individual or individuals competent to enter into a binding contract, including a partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State, political subdivision of a State, or any agency thereof.

(b) *Need for facility.* At the time any loan application is being considered, the county committee shall determine if the proposed farm facility is needed for the storage of facility loan commodities produced on the farm(s) to which the loan application relates. In making this determination, the maximum storage capacity for which a loan may be made shall be the amount by which the total capacity of existing storage on the farm(s) which is suitable for storage of facility loan commodities is less than the storage capacity necessary to store one year's production (computed on the basis of estimates yields) of the facility loan commodities produced on the farm(s) to which the loan application relates. If the capacity of the storage to be purchased or erected by the applicant exceeds the need as determined above, the application may be approved but the amount of such loan shall not exceed the maximum amount authorized in § 1474.8(b).

[47 FR 33669, Aug. 4, 1982]

§ 1474.5 Eligible storage or drying equipment.

(a) *Basic requirements.* Loans shall be made only for the purchase and installation of eligible storage facilities or for remodeling existing facilities, as provided in this section. Eligible storage facilities shall include the following: (1) New or newly constructed conventional-type cribs, bins or flat structures designed and engineered for grain storage; (2) flat storage structures designed and engineered for multipurpose use which are adapted or modified for use as grain storage: *Provided,* that if only a portion of the structure is for use as grain storage, the area or space used for grain storage must be isolated or closed off from other use areas and only the pro rata costs of the portion of space used for grain storage shall be included in determining the amount of the loan; (3) oxygen-limiting and other upright silo-type structures designed for wet storage; and (4) used structures (including the real estate where located, if any) if purchased from CCC or sold by CCC under provisions of a security agreement.

(b) *Additional requirements or provisions.* (1) If the farm storage facility is purchased from a source other than CCC, the supplier must be approved under Supplier's Agreement, Form CCC-308, before the loan is approved. CCC may also require the supplier to certify to the costs of the items and amounts paid and unpaid before the loan is disbursed.

(2) A storage facility shall not have been delivered to the farm more than 30 days prior to the date of the application for the loan.

(3) Loans may include only the cost of new materials and off-farm labor to be used in constructing new storage or in the remodeling of existing facilities.

(4) Loans may be approved for the purchase of used storage facilities only when such facility is purchased from CCC.

(5) Storage structures shall not be of a type (such as bags or snow fences)

which require the weight or bulk of the commodity stored to maintain its shape.

(6) Storage structures must, in the opinion of the county committee, have a usable life of at least 10 years.

(7) Loans may be approved for financing additions to or modifications of an existing storage facility to increase storage capacity if the county committee determines that: (i) The modification is necessary to increase the storage capacity of the unit and (ii) the structure is not a horizontal or bunker type silo.

(8) A storage facility must include ladders and safety devices as the county committee may require and must be suitable for storing the facility loan commodities for which need is determined.

(c) *Loans not available.* Loans shall not be available to provide storage for commercial use or for storing commodities which the borrower intends to purchase or to store for others. Any facility which is located in working proximity to any commercial storage operation shall be deemed to be a part of such operation.

[47 FR 33669, Aug. 4, 1982]

§ 1474.6 Term of loan.

The maximum term of the loan shall be five years from the date of the Promissory Note and Security Agreement. The term of an individual loan, however, may be extended and reextended for terms of not to exceed one year each if the approving State or county committee determines in writing that the borrower is unable to meet the current payment when due because of conditions beyond the borrower's control.

[46 FR 20152, Apr. 3, 1981]

§ 1474.7 Security for loan.

(a) *All States except Louisiana.* All loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified by the Uniform Commercial Code adopted in the applicable State. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the underlying realty which by operation of law attach to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, CCC may require that a subordination agreement or a disclaimer of any interest in the collateral as fixtures be obtained in writing from each person, other than the borrower, having any interest in the real estate on which the collateral is to be located.

(b) *Louisiana.* All loans shall be secured by a chattel mortgage covering the farm storage facility which shall be filed or recorded as required by State law and shall constitute the sole security interest in the collateral, except for prior liens on the underlying realty which by operation of law attach to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, CCC may require that a severance agreement be obtained from each person, other than the borrower, having any interest in the real estate on which the collateral is to be located.

NOTE: Every State, except Louisiana, has adopted in some form Article 9 of the Uniform Commercial Code (UCC) entitled "Secured Transactions." In States which have adopted Article 9, CCC's security interest in loan collateral is perfected by filing a financing statement. Louisiana law, however, requires the filing of a chattel mortgage.

(c) *Real estate lien requirement.* A lien on real estate shall be required for any loan, regardless of the loan amount, if the approving committee determines that additional security is needed to protect CCC's interest. Such lien shall be in the form of a real estate mortgage, deed of trust, or other security instrument approved by CCC. At the discretion of the approving State or county ASC committee, the lien may be a first or second lien on the land on which the facility is located, or a first or second lien on such other real estate as may be acceptable to CCC.

(d) *Fees.* Fees for filing or recording financing and continuation statements or chattel mortgages and any extensions thereof shall be paid by CCC. All other filing or recording fees, including those involving real estate liens, shall be paid by the borrower.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.8 Amount of loan and loan application approvals.

(a) *Cost.* The cost on which the loan shall be based is the "net cost" of the facility and/or accessories and services, which is the actual cost to the applicant, after deduction of any discount or rebate. Net cost may include the purchase price, local sales taxes payable by the purchaser, costs for transportation, delivery, site preparation, erection or installation, and the cost of materials and labor for concrete work. Net cost shall not include the cost of materials and labor for electrical and handling equipment or wiring and the cost of transportation, delivery, site preparation, erection or installation of such equipment or wiring, used or secondhand material, or any other item which is determined to be ineligible for loan.

(b) *Amount of loan.* The amount of any farm facility loan, when added to the outstanding balance of any facility loan, shall not create for the applicant an aggregate outstanding balance in excess of $25,000 and shall not exceed the smaller of: (1) 70 percent of the net cost of the applicant's needed storage, or (2) the prorated cost of the applicant's storage which is needed and suitable for the storage of the applicable commodities when a storage structure has a larger capacity than the applicant's needed capacity.

(c) *Loan application approvals.* (1) The county committee may approve or disapprove loan applications up to the maximum amount unless a lower limit has been established by the State committee.

(2) The State committee shall approve or disapprove all other loan applications.

(3) A loan application shall not be approved where the approving authority determines that approval would not be in the best interest of the program.

(d) *Expiration of approvals.* If there has been no disbursement of the loan 4 months after the date the loan application was approved, the approval shall become null and void unless it is extended in writing by the approving State or county committee for a stated period not to exceed an additional 4 months: *Provided, however,* That the Executive Vice President, CCC, or his designee, may extend the approval for such additional periods of time as he may deem justified by the circumstances.

[45 FR 42246, June 24, 1980, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.9 Downpayment.

A minimum downpayment representing the difference between (a) the amount of the loan determined pursuant to § 1474.8(b), and (b) the net cost of eligible storage facilities determined pursuant to § 1474.8(a) shall be made by the loan applicant to the supplier or contractor before the loan is disbursed. The minimum downpayment shall be in cash except that a reasonable trade-in allowance for farm equipment or other tangible property may be considered as cash. If the reasonable trade-in allowance of such equipment or property is in excess of the required minimum downpayment, the amount of the loan shall be reduced by the amount of such excess. If the trade-in allowance is in excess of a reasonable market value, only the reasonable market value may be counted toward the minimum downpayment. Any additional amount required to equal the minimum downpayment shall be paid in cash by the applicant to the supplier or contractor before the loan is disbursed. A downpayment shall not include any discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

[47 FR 33670, Aug. 4, 1982]

§ 1474.10 Interest and late payment charges.

Loans shall bear interest at the rate set forth in a notice published in the FEDERAL REGISTER. If a loan installment is not paid when it is due and payable, a late payment charge shall be applied against the delinquent debt as provided in 7 CFR Part 1403 (46 FR 61442).

[47 FR 33670, Aug. 4, 1982]

§ 1474.11 Repayment of loan and acceleration of maturity date.

(a) The principal amount of the loan shall be repayable in equal annual installments together with interest as provided for in § 1474.10 on the unpaid balance from the date of disbursement of the loan or date of the last repayment, whichever is later, up to, but not including the date of repayment. The first installment, including interest on the unpaid balance, shall be due and payable during the 12-month period beginning on the first anniversary date of the note. A like installment shall be similarly due and payable during the 12 months following each anniversary date thereafter until the principal, together with the interest thereon, has been paid in full. The payment of each such installment may be by cash, check, or money order. Any installment which is due and payable and which has not been paid in cash, or by check or money order, shall be paid by deduction from any amounts which are otherwise due the borrower from price support loans and purchases, as well as storage payments. However, any such deductions shall not be made until after service charges and amounts due prior lienholders have been deducted. Payments shall be applied first to accrued interest and then to principal.

(b) Each installment must be paid not later than the end of the applicable 12-month period. Upon failure to pay any installment by the end of such period, the loan may be declared delinquent and, at the option of the approving State or county committee, the loan may be called and the entire unpaid amount of the loan shall become immediately due and payable. Any delinquent loan or any past due amount on any annual payment may be deducted and paid out of any amounts due the borrower under any program carried out by the Department of Agriculture or any other agency of the United States in accordance with the regulations at 7 CFR Part 13. If the maker of the note breaches any convenants, agreements, terms, or conditions to be performed under §§ 1474.1 to 1474.17 or under the loan application, promissory note and security agreement, chattel mortgage, or other security instruments securing the loan, or under any other instruments executed in connection with the loan, or if the collateral is used in connection with any commercial operation including, but not limited to, elevators, warehouses, dryers, or processing plants, during the life of the loan, CCC may declare the entire indebtedness immediately due and payable.

(c) The loan may be paid in full or in part by the borrower at any time before maturity.

(d) Upon payment of a loan, the county committee shall release or obtain the release of security instruments, upon request therefor by the borrower, or as otherwise required by State law. The chairman or a member of the county committee or the county executive director is authorized to act as agent of CCC in releasing or obtaining the release of security instruments.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33670, Aug. 4, 1982]

§ 1474.12 Taxes.

The borrower must covenant to pay all real and personal property taxes which may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes and add the amount of such payments to the borrower's indebtedness. CCC may provide in the loan instruments for increasing the lien on the collateral by the amount of such payments.

[39 FR 38632, Nov. 1, 1974]

§ 1474.13 Maintenance and liability.

The borrower shall maintain the loan collateral in good condition and available for the storage of one or more of the facility loan commodities described in § 1474.4(a). Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of such collateral.

[47 FR 33671, Aug. 4, 1982]

§ 1474.14 Disbursement of loan.

The disbursement of the loan by CCC will be made when the farm storage facility has been delivered, erected, constructed, assembled, or installed, and, when required, the county committee, or a representative of the county committee, has inspected and approved such facility. Disbursement will be made only if the borrower furnishes satisfactory evidence of and certifies to the (a) total cost of the facility and (b) payment of all debts on the facility in excess of the amount of the loan. Disbursement shall be made jointly to the borrower and to the contractor(s) or supplier(s). However, disbursement may be made to the borrower alone if the borrower submits satisfactory evidence to the county committee that the borrower has paid to the contractor(s) or supplier(s) all amounts which are due and owing on the facility.

[47 FR 33671, Aug. 4, 1982]

§ 1474.15 [Reserved]

§ 1474.16 Sale or conveyance of security and assumption of loan indebtedness.

(a) The collateral securing a loan shall be sold by CCC when a loan has been called and not repaid or when the borrower requests the county committee to sell the collateral before repaying the loan. When the borrower desires to sell or convey the facilities or other property securing a loan without repaying the loan in full, he shall apply to the county committee for approval of the sale or conveyance on behalf of CCC.

(b) An assumption of the loan may be approved by CCC in the case of a sale of the collateral by CCC or the borrower under paragraph (a) of this section or in the event of the death, incompetency, or disappearance of the borrower. Requests for approval of such assumptions shall be made to the county committee by the borrower or the successors or representatives of a borrower. If such approval is granted, the borrower or his successors or representatives shall execute an assumption agreement with the purchaser or the party assuming the loan. The assumption agreement shall be in the form prescribed by CCC. Such agreements may provide for the assumption of the unpaid balance of both the principal amount of the loan and the interest computed to the date of the assumption and any other charges which may be provided for in the loan application and approval and in the security instruments furnished by the borrower pursuant to § 1474.7.

[39 FR 38632, Nov. 1, 1974, as amended at 47 FR 33671, Aug. 4, 1982]

§ 1474.17 Death, incompetency, or disappearance.

If a person who is entitled to the payment of any sum due in connection with a farm facility loan dies, disappears, or is declared incompetent, either before CCC has issued a draft in payment therefor or after CCC has issued a draft in payment but before the draft is negotiated, payment shall be made to such person's successors or representatives authorized to receive such payment. The order of precedence for payment is set forth in 7 CFR Part 707. Payment shall be made upon proper application therefor (Form ASCS-325) to the office of the county committee which made the loan.

[47 FR 33671, Aug. 4, 1982]

§ 1474.18 Forms.

The following forms shall be used in connection with the Farm Facility Loan Program: CCC-185 Loan Application and Approval; CCC-186 Promissory Note and Security Agreement; CCC-187 Disbursement, Repayment and Inspection Record; CCC-298 Assumption Agreement; CCC-299 Certificate of Title; CCC-308 Supplier's Agreement; CCC-401 Bill of Sale; CCC-500 Repayment Record. These forms, and any other form required by State law, may be obtained in the ASCS State and county offices. The reporting and recordkeeping requirements contained herein have been approved by, and subsequent reporting and recordkeeping requirements will be subject to, the approval of the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

[47 FR 33671, Aug. 4, 1982]

PART 1475—EMERGENCY FEED PROGRAM

Subpart—Livestock Feed Program

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Subpart—Livestock Feed Program

AUTHORITY: Secs. 1-4 of 73 Stat. 574, as amended, 7 U.S.C. 1427 note, secs. 407 and 421 of 63 Stat. 1055, as amended, 7 U.S.C. 1427, 1433, secs. 4 and 5 of 62 Stat. 1070, as amended; 15 U.S.C. 714b and c.

SOURCE: 41 FR 22552, June 4, 1976, unless otherwise noted.

§ 1475.1 General statement.

The regulations in this subpart contain the terms and conditions of a Livestock Feed Program formulated under Pub. L. 86-299, as amended, and sections 407 and 421 of the Agricultural Act of 1949, as amended. The objective of the program is to give assistance to eligible livestock owners through sales of feed grain at beneficial prices to provide feed for eligible livestock. The assistance is to prevent widespread liquidation or undue culling of livestock because of flood, drought, fire, hurricane, storm, tornado, earthquake, disease, insect infestation or other catastrophe.

§ 1475.2 Administration.

The program will be administered by ASCS and CCC under the general direction and supervision of the Executive Vice President, CCC. In the field it will be carried out by State and county committees and offices and the PVCO. State and county committees and offices, PVCO, and representatives and employees of any of the above do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

§ 1475.3 Definitions.

The terms used in this subpart and in all forms and documents used in connection herewith (except where the context or subject matter otherwise requires, or where otherwise defined in the Livestock Feed Program) shall have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(b) "CCC" or "ASCS" means the Commodity Credit Corporation or the Agricultural Stabilization and Conservation Service, respectively.

(c) "DAP" means the Deputy Administrator, Programs, ASCS.

(d) "PVCO" means the Prairie Village Commodity Office of ASCS established to manage CCC commodity operations in the field.

(e) "State committee", "State office", "county committee", or "county office" means the respective ASC committee or ASCS office.

(f) "Approving officials" means the officials authorized under § 1475.5(e) to approve or disapprove an application for feed grain.

(g) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity. In the case of a partnership, a person shall be deemed to include the partnership and all of the partners, and in the case of a family corporation (i.e. a corporation in which 75 percent or more of the stock is owned by an individual and those related to him by blood or marriage), the person shall be deemed to include the corporation and all such individuals.

(h) "Owner" means the person who owns or the persons who jointly own the eligible livestock to be fed with the feed grain to be purchased under the program and who meet(s) the requirements of eligibility contained in § 1475.4. A person or persons who mortgage(s) livestock as security for a loan shall be considered as the owner for the purpose of these regulations if he or they meet such requirements of eligibility.

(i) "Warehouse" means a warehouse which is currently operating under a Uniform Grain Storage Agreement with CCC.

(j) "Handler" means any person approved by the county committee to perform designated services under a grain handler agreement with CCC, and who is authorized, if he agrees, to advance whole grain from his private stocks.

(k) "Dealer" means any person engaged in selling processed feed who is approved by the county committee to advance processed feed from his inventory to approved applicants when requested to do so by the county committee under a dealer's agreement with CCC.

(l) "Bin site" means a plot of ground upon which CCC-operated storage facilities are located.

(m) "Feed grain" and "grain" means barley, corn, grain sorghums, and oats and, when designated for use under this program by the Executive Vice President of CCC or his designee, includes wheat and rye.

(n) "Loan grain" means the owner's feed grain which is security for a commodity loan(s).

(o) "Processed feed" means feed grain which contains not more than 90 percent by weight of any one feed grain and which is in ground, rolled, steamed, pelletized, or other processed form provided that all of the ingredients of the whole grain are included.

(p) "Program period" means the period of time specified by the State committee during which feed grain may be acquired and fed to an owner's eligible livestock.

(q) "Feeding period" means the period beginning on the date of application or such later date when the owner must provide additional livestock feed and ends at the same time as the program period.

(r) "Livestock" means all classes of beef and dairy cattle, sheep, goats and swine.

(s) "Eligible livestock" means (1) livestock (i) which have, for at least six months prior to the date of application to purchase, feed, been owned or leased under a contractual agreement which requires that the lessee furnish the feed for such livestock, provided that the lessee also has a beneficial interest in such livestock such as the right to market a share of the increase, and (ii) which were either located in the emergency area on the date the area was designated or, as determined by the State committee, were moved into the area in accordance with the owner's normal livestock operation, such as rotation grazing; (2) cattle, sheep, goats, and swine purchased by the applicant as replacement breeding stock according to his customary normal breeding operations; (3) livestock inherited by an applicant, or purchased by an applicant as part of a complete farm operation other than through foreclosure; and (4) offspring of livestock described in paragraphs (s)(1), (2), and (3) of this section.

(t) "Eligible animal units" shall be computed as follows:

(1) Two units—one dairy cow or bull, two years old or more.

(2) One unit—one cow, bull or steer, one year old or more, or three other cattle (excluding dairy cattle two years old or more); three sows or hogs on full grain ration; five other swine; five sheep or goats (excluding lambs and kids); seven lambs or kids.

§ 1475.4 Owner eligibility.

Subject to terms and conditions prescribed in this subpart, the owner may be approved to purchase feed grain for eligible livestock, if in the judgment of the approving officials the following eligibility requirements are met:

(a) *Loss of feed.* The emergency has caused a loss of feed normally produced by the owner which therefore requires the owner to purchase a quantity of feed substantially more than normal.

(b) *Additional feed required.* At the time the owner applies for feed grain he does not have, and is unable to obtain through normal channels of trade without undue financial hardship, sufficient feed for his eligibile livestock. Undue financial hardship shall be deemed to exist upon determination by the approving officials that under prevailing local standards the applicant's financial resources preclude his obtaining required feed from normal suppliers without imperiling continuance of his farming operations, defaulting on existing financial obligations, unsound borrowing or excessive disposal of livestock. Purchased feed shall be considered as a liquid asset in determining undue financial hardship. In making this determination, approving officials shall give especially close scrutiny to applicants who locally are customarily regarded as being wealthy, having large financial reserves, or as having substantial nonfarm sources of income. If the approving officials are uncertain as to whether the applicant meets the eligibility requirements, they may request such factual information as will permit them to make a determination. If the applicant is a partnership, the resources of the partnership and all of the partners must be taken into consideration in determining the eligibility of the partnership to receive assistance. If the applicant is a family corporation, as described in § 1475.3(g), the resources of such corporation and of the individuals who together with the corporation are considered as a person under § 1475.3(g) must be taken into consideration in determining the eligibility of the family corporation to receive assistance.

§ 1475.5 Application and approval.

(a) *Who may apply.* Any owner of eligible livestock who fulfills the requirements of § 1475.4 may file an application under this program. When an application is filed, the applicant if he is an individual, a partner if the applicant is a partnership, or a duly authorized representative of the owner in the case of any other person shall execute a certification that the owner is eligible for feed under provisions of § 1475.4. If an application is filed in the name of a corporation, except a family corporation as described in § 1475.5(g), the application must be accompanied by a certified copy of a resolution by the Board of Directors of such corporation authorizing its representative to file the application and authorizing the purchase of grain under the Livestock Feed Program on behalf of said corporation.

(b) *Where to apply.* An application must be filed at the county office in which the majority of the livestock shown on the application is usually located.

(c) *Filing of applications.* (1) The owner or his duly authorized representative shall furnish all information required of him on the application and shall certify that the owner meets the requirements specified in § 1475.4.

(2) Applications for feed grain may be filed at any time during the program period provided that sufficient time is allowed to permit the feeding of such feed grain prior to the ending date of the program period.

(d) *Quantities of feed grain.* (1) Prior to the purchase of feed grain hereunder, the owner shall repay the principal and interest on all his commodity loans covering grains designated by the Secretary as feed grains which were obtained after the program was available for use and determined by the county committee to be stored within reasonable hauling distance of his livestock operation: *Provided,* That this shall not apply with respect to warehouse stored loan grain which is delivered by rail or grain specified in § 1475.9(c)(1). In the case of such a commodity loan made jointly to the owner of the eligible livestock and another producer, the owner shall repay the principal and interest on the portion of the loan represented by his share of the collateral.

(2) The net approved quantity will be the net feed grain allowance, which shall be computed for the entire feeding period.

(3) The net feed grain allowance shall be the smallest of: (i) The feed grain gross allowance less the total quantity of feed (feed grain, hay, silage, pasture and range) determined by the approving officials to be available to the owner for feeding his eligible livestock during the feeding period, or (ii) the quantity the approving officials determine to be adequate considering the total quantity of feed determined to be available to the owner for feeding his eligible livestock during the feeding period, or (iii) the amount of livestock feed lost by the owner as a result of the emergency. If the applicant purchases oats hereunder, the net allowance may be increased by up to 20 percent.

(4) The feed grain gross allowance shall not exceed the smaller of 10 pounds per day, or whatever lesser quantity is established by the State committee or county committee, times the number of days in the feeding period times the eligible animal units.

(5) The total quantity of feed available to the owner shall be the quantity owned by him plus feed sold or contracted for sale by him after a date(s) established by the State committee. The State committee shall establish dates that reflect an emergency that was the result of a (i) slowly developing disaster, or (ii) sudden disaster. Purchased feed shall not be considered as feed available. In determining the total quantity of feed available if the owner is a partnership or a family corporation, the quantity of feed available to the individuals and other legal entities which are collectively considered as a person under § 1475.3(g) shall be combined and considered feed of the owner.

(e) *Approval of the applications.* The county committee shall review each application filed with it.

(1) Approving officials are as follows: (i) The county committee is authorized to approve or disapprove all applications provided the applicant is not an ASC committeeman or an ASCS employee, (ii) the State committee or its designee is authorized to approve or disapprove those applications of county committeemen and ASCS employees, (iii) DAP or its designee shall approve or disapprove State committee applications. All applications forwarded to higher authority for consideration shall be accompanied by committee recommendations.

(2) No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and other information, including knowledge of the county and State committeemen concerning the owner's normal operations shall be taken into consideration in making recommendations and determinations. If information furnished by the owner is incomplete or not clear and sufficient information is not otherwise available as to the owner's operations and financial condition to make a determination or recommendation as to the owner's eligibility, additional information deemed necessary shall be requested from the applicant.

(3) The owner shall be notified in writing of (i) the action taken on his application by the approving officials and (ii) his right to appeal.

§ 1475.6 When sales shall be made.

Sales of feed grains shall be made in quantities which would permit feeding of the grain to eligible livestock by not later than the final date of the program period.

§ 1475.7 Financial arrangements.

When an owner desires to purchase grain pursuant to an approved application, he shall, prior to any delivery, make payment to the county committee by means of an acceptable remittance for the quantity of grain purchased, except that when a State or

Federal agency certifies to CCC that it will finance part or all of the cost of the purchase, such certification may be accepted in lieu of cash to the extent of the amount so certified if such agency agrees (a) to make payment to CCC of such amount in the normal course of its procedures for payment and (b) to issue the check, draft, warrant, or such other means of payment as may be employed, directly to CCC.

§ 1475.8 Pricing of grain.

(a) The sale price of feed grain is 100 percent of the applicable CCC county loan rate for the county in which the commodity is delivered. If no such county loan rate is set forth in the CCC annual crop supplement, it shall be a comparable rate as determined by DAP.

(b) *Inadvertent overdeliveries.* Inadvertent overdelivery of the total approved quantity stated in the application which is delivered to an owner from a bin site under § 1475.10(b), carrier's conveyance under § 1475.10(d), or because of an error on the part of CCC shall be settled between the owner and CCC at the applicable sales price for the grain delivered. Overdeliveries in excess of such total approved quantity by warehouses, handlers or dealers not due to error by CCC shall be settled between them and the owner.

§ 1475.9 Sales of loan grain.

(a) *General.* No feed grain (including feed grain contained in processed feed made available through approved dealers) other than the owner's loan grain of the kind designated by the Secretary as feed grain shall be sold to an owner under the program until all the owner's loan grain determined by the county committee to be within reasonable hauling distance of the owner's livestock operation has been redeemed or purchased by him in accordance with this section (except as provided in paragraph (c) of this section). Grain which an applicant has under loan (except loans specified in § 1475.5 (d)(1)), shall be utilized to fulfill feed grain requirements under an approved application.

(b) *Loan grain in farm storage.* (1) In making available feed grain which the applicant has under a farm stored loan, CCC shall (i) accelerate the maturity date of the entire loan or (notwithstanding any provisions of the loan documents to the contrary) that portion of the loan needed to meet the approving requirements; (ii) require delivery of the grain to be made to CCC on the farm where stored (settlement to be made on the basis of the producer's loan documents); (iii) require the owner to purchase under the application the quantity of such grain as may be required at the applicable price under this program; (iv) redeliver it to him on the farm where stored; and (v) make additional grain available to the applicant from CCC stocks, if the quantity needed is in excess of that the applicant has under loan.

(2) In computing storage payments due under reseal loans the payments to which the owner is entitled shall be based on the storage period ending the month preceding the month the commodity is delivered to CCC in satisfaction of the loan.

(3) If there has been a conversion of grain securing the loan, settlement shall be made in accordance with commodity loan regulations. The owner shall also be declared ineligible to participate in the Livestock Feed Program.

(c) *Loan grain in warehouse storage.* (1) In making available feed grain which the applicant has under a warehouse stored loan, CCC shall (i) accelerate the maturity date of the entire loan or that portion of the loan which was made on a warehouse receipt(s) representing a quantity of grain not exceeding the quantity and quality of grain needed to meet the approved requirements; (ii) acquire title to such grain; (iii) credit the loan with the settlement value of the quantity and quality of such grain (settlement to be made on the basis of the producer's loan documents and price support regulations); (iv) require the owner to purchase such grain under the approved application at the applicable price under this program; and (v) deliver the warehouse receipt(s) representing such grain to him. Liquidation of part of a receipt will not be permitted. If the quantity required is equal to or in excess of the amount shown on a warehouse receipt(s), the owner shall acquire the grain represented by the warehouse receipt(s), and additional amounts needed in excess of that represented by the warehouse receipt(s) may be acquired from CCC-owned stocks.

(2) The provisions of this section apply only to warehouse storage loans on grain which has not been delivered by rail.

(3) The producer shall be responsible for warehouse charges for quantities acquired in excess of the amount on the approved applications.

(d) *Refund of storage charges.* In the case of grain delivered to an owner which has been under a first year warehouse storage loan, (1) the owner shall be responsible to warehouseman for payment of all storage and handling charges, (2) it will be the owner's responsibility to collect from warehouseman any unused charges on a prepaid receipt.

§ 1475.10 Sales of CCC-owned grain.

CCC shall designate the delivery point and kind of CCC-owned grain to be sold under this program.

(a) *Delivery orders.* Delivery shall be authorized after payment is received by issuance of non-transferable delivery orders stating the kind and quantity of grain to be delivered. Quantities authorized by delivery orders shall not exceed the quantity of grain that can normally be fed between the expected date of delivery and the end of the program period.

(b) *Warehouse and handler stored grain.* The owner shall take physical delivery of the grain as soon as possible after issuance of the delivery order but not earlier than the date of such issuance and not later than a date which would normally permit feeding of the grain by the end of the program period. Title and risk of loss to the grain specified in the delivery order and stored at a warehouse or handler facility shall pass to the owner upon issuance of the delivery order. The owner shall promptly present the delivery order to the warehouseman or handler. CCC shall not be responsible for storage charges after the date of issuance of the delivery order but shall be responsible for handling charges at not to exceed the rate provided in CCC's agreements with the warehouseman or handler. Settlement for differences in quality or quantity between the grain delivered to the owner and the grain described in the delivery order shall be made between the owner and the warehouseman or handler. However, in cases where there is a substantial underdelivery in quantity, the owner shall not make settlement with the warehouseman or handler but shall promptly notify the county office and a revised delivery order will be issued to the owner.

(c) *Grain in carrier's conveyance.* Where CCC-owned grain is not available in the area and there are no approved handlers or dealers available, CCC shall ship and consign the required grain to the county committee. Title and risk of loss shall pass to the owner upon delivery of the grain into his conveyance or whenever he takes possession of the grain if prior to placing it in his conveyance. The sale price shall not be subject to adjustment for the grade and quality actually delivered. The grain shall be weighed at destination if scales approved by CCC are available. If such scales are not available, settlement weights shall be as determined by CCC. CCC shall bear charges for transportation to the delivery point, for unloading the grain from the carrier's vehicle, for loading it into the owner's conveyance, and for weighing.

(d) *Unfit grain.* Notwithstanding the foregoing, if any feed grain delivered to an owner by CCC is not of a quality fit for feeding his livestock, he shall advise the county office and arrangements will be made for delivery of substitute feed grain.

(e) *Custom processing.* An owner who wishes to have grain pelletized, ground, rolled, custom mixed, or otherwise processed may do so, if the feed is processed from the grain purchased from CCC or the feed accepted from the processor is processed from the same kind of grain of grade number 3 or better. Likewise, the quantity shall be the same as the grain purchased from CCC except for minor milling losses. CCC shall not be responsible for any charges involving processing, bagging or added freight incurred for processing in-transit. CCC grain shall not be exchanged for other ingredients, services, cash, credits or any other thing of value; and any amount received by owner in settlement for any differences in quantity shall be paid to CCC.

§ 1475.11 Sales of grain advanced by dealers.

Any owner who prefers to purchase feed grain hereunder as a component of a processed feed from the stocks of an approved dealer may do so upon proper request at the county office.

(a) *Dealers.* Interested persons may be approved as dealers (§ 1475.3(k)) by the county committee upon the execution of a Dealer's Agreement and the furnishing of acceptable performance security. An approved dealer may be suspended immediately in accordance with regulations of CCC governing Suspension and Debarment (29 FR 10495 and any amendments thereto) upon probable cause for belief that the dealer has falsely certified, or violated, or failed to comply with the terms of the Dealer's Agreement or the provisions of these regulations.

(b) *Warrants.* After payment for the requested quantity of feed grain at applicable prices (§ 1475.8) the county office shall issue a nontransferable warrant to the owner for the kind and quantity of feed grain for which payment has been received. The warrant will be valid for use at such approved dealer as the applicant may select during such period as may be stated in the warrant. The owner may obtain as many separate warrants as shall be necessary to permit delivery of the net approved quantity (§ 1475.5(d)(3)) by a date that would permit feeding of the grain within the program period. No delivery shall be made against a warrant after the expiration date of such warrant. If the full quantity of feed grain authorized to be advanced on a warrant is not physically delivered to the owner, the warrant shall be returned to the county office for reissuance or refund to the owner.

(c) *Feed grain advanced by dealer.* Upon presentation of a warrant by an owner and acceptance of it by a dealer, the dealer shall deliver feed grain: (1) From his own stocks; (2) in processed form; (3) not earlier than the date of issuance nor later than the date of expiration; and (4) title and risk of loss shall pass to the owner upon delivery of the grain into his conveyance.

(d) *Obligations of dealers and owners.* The warrant shall be used only for the purpose of obtaining the quantity of feed grain specified thereon and shall not be valid for other ingredients, services, cash, credits, or any other thing of value. The dealer shall not charge the owner for the value of the feed grain covered by the warrant and contained in the processed feed, or any weighing, load out or handling charge on such feed grain. However, the dealer may charge the owner for the value of the other ingredients in the processed feed, additives, processing, bags, bagging, and similar costs as well as handling charges on that portion of the processed feed not covered by the warrant. Such costs shall not be the responsibility of CCC and will be settled between the dealer and the owner. The dealer shall retain a copy of the invoice, bill or other evidence of sale of the processed feed to the owner (§ 1475.13) showing the gross quantity of processed feed and the net quantity of each kind of designated feed grain therein physically delivered to the owner against the warrant.

(e) *Replacement of feed grain by CCC.* (1) Upon receipt of evidence satisfactory to CCC that the dealer has advanced feed grain against warrants issued to an owner, the county office shall issue a Dealer's Certificate to the dealer.

(2) Dealer's Certificates shall have a value specified thereon which is equal to the value of the feed grain delivered under applicable warrants. Such value is established by CCC by taking into consideration local market prices and terminal market prices adjusted for transportation and handling costs.

(3) A Dealer's Certificate will be accepted at face value when presented to the Prairie Village Commodity Office or other office designated by that office or DAP and applied to the purchase of a feed grain. Such acceptance at face value will be made under a con-

tract which specifies a "date of sale" not more than 90 days after the effective date of the certificate. If the specified date of sale is after the 90th day, the face value shall be reduced by one twenty-fifth of one percent for each day beginning on the 91st day after the effective date of the certificate excluding the date of sale specified in the CCC contract to which it is applied. The certificates may be transferred by endorsement to any other person. CCC reserves the right to determine the time and place of delivery and the class, grade, and quality of feed grain to be delivered in redemption of Dealer's Certificates. Feed grain sold under a Dealer's Certificate shall be sold at the applicable current market price determined by CCC. Overdeliveries of the quantity of grain requested shall be adjusted at the applicable market price.

(4) If the full amount of the Dealer's Certificate is not redeemed in feed grain, a balance certificate shall be issued for the unused amount. If the amount is $3.00 or less, no balance certificate will be issued unless requested. The effective date of the balance certificate shall be the effective date of the original certificate against which it is issued plus the number of days the certificate is in the hands of CCC before the balance certificate is issued. Balance certificates may be redeemed in feed grains in the same manner as the original certificates.

§ 1475.12 Disposition of grain and adjustment of sales price.

(a) *Feed for livestock.* The total quantity of feed purchased under the program must be fed to the owner's livestock or poultry within the program period. The county committee may consider feed grain as being fed within the program period where the failure to timely feed all such grain was unavoidable. The amount of grain remaining which may be considered as being timely fed shall not exceed a 10 day supply.

(b) *Adjustments and kind of feed grain involved.* (1) If the owner does not feed the grain to his eligible livestock as provided in paragraph (a) of this section, he shall pay to CCC, as liquidated damages, the difference between the price paid for such feed grain and the market price thereof, as determined by CCC, on the date of the delivery order, warrant, or other delivery authorization applicable to the last acquisition of such feed grain under the program.

(2) If an owner has failed to report a livestock change as required by paragraph (c) of this section, he shall pay to CCC the price difference under paragraph (b)(1) of this section for any grain which he has purchased in excess of the quantity that CCC would have approved if such report had been made.

(3) The kind and quantity of feed grain on which price adjustments shall be based shall be the kind and quantity acquired from CCC.

(c) *Reporting changes.* If the owner suffers losses of, or disposes of, or transfers any of his eligible livestock, he shall report the fact promptly to the county office from which feed grain was purchased under the program. If the owner fails to feed the quantities of feed to his eligible livestock as specified in this section, he shall report the fact promptly to the applicable county office.

§ 1475.13 Maintenance of books and records.

Warehousemen, handlers, and dealers shall maintain and preserve for at least three full years following deliveries made against delivery orders and warrants and for such additional period as CCC may request in writing, books and records which will permit verification of all transactions with regard to delivery orders and warrants. An examination of such books and records by a duly authorized representative of the United States shall be permitted at any time during business hours. The owner shall within 30 days, if requested by the county committee, submit information with respect to his livestock feeding operations.

§ 1475.14 Violations.

(a) *Disposal of grain to others.* If the owner has failed to utilize the quantity of feed purchased under the program, he shall not dispose of such grain. If the feed grain acquired from CCC is disposed of to any other person, except as permitted in § 1475.10(f) or if a delivery order or warrant is used for obtaining other than feed grain, the owner shall be subject to such civil penalties and to such criminal liabilities as are provided by applicable Federal statutes.

(b) *Fraudulent representations.* Any owner, warehouseman, handler, dealer or any other person may be suspended from participation in the program in accordance with regulations of CCC governing Suspension and Debarmant (29 FR 10495 and any amendment thereto) such person has falsely certified, represented or reported under these regulations, or failed to comply with any provisions of these regulations or of any contracts entered into under these regulations. The making of such fraudulent representations shall render such person liable under applicable Federal criminal and civil statutes.

§ 1475.15 Termination or suspension of program.

The county committee may at any time during the program period recommend suspension or termination of the program. The State committee may at any time during the program period suspend or terminate the program. The suspension or termination in a county shall not apply to any delivery order or warrant issued prior to the effective date thereof.

§ 1475.16 Appeals.

Any owner who is dissatisfied with determinations as to: (a) His eligibility or eligibility of his livestock; or (b) quantity of feed grain approved for eligible livestock may make a request for reconsideration or appeal such determinations in accordance with the procedures set forth in the Appeal Regulations of ASCS (29 FR 8200, June 30, 1964, and any amendments thereto). Determinations made by a State committee are not appealable by the applicant.

§ 1475.17 Authority not delegated.

No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee or commodity office.

Subpart—Emergency Feed Program

AUTHORITY: Sec. 1105 of the Food and Agriculture Act of 1977, 91 Stat. 955, unless otherwise noted.

SOURCE: 43 FR 26413, June 20, 1978, unless otherwise noted.

§ 1475.50 General statement.

The regulations in this subpart contain the terms and conditions of an emergency feed program formulated under section 1105 of the Food and Agriculture Act of 1977. The objective of the program is to pay to eligible livestock owners a portion of the cost of feed purchased during an emergency in which they suffered substantial loss of feed production for their livestock due to a natural disaster. The program shall be in effect for any livestock owner determined eligible by an approving official designated by the Agricultural Stabilization and Conservation Service.

§ 1475.51 Administration.

The program will be administered by ASCS under the general direction and supervision of the Executive Vice President, CCC. In the field it will be administered through the State and county committees.

§ 1475.52 Definitions.

The terms used in this subpart and in all forms and documents used in connection herewith (except where the context or subject matter otherwise requires, or where otherwise defined herein) shall have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in lieu of the Secretary.

(b) "CCC" or "ASCS" means the Commodity Credit Corporation or the Agricultural Stabilization and Conservation Service, respectively.

(c) "DASCO" means the Deputy Administrator, State and County Operations, ASCS.

(d) "State committee", "State office", "county committee", or "county office" means the respective ASC committee or ASCS office.

(e) "Approving officials" means the officials authorized under § 1475.55 (g) to approve or disapprove an application for assistance under this subpart.

(f) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity.

(g) "Owner" means the person who owns or the persons who jointly own the eligible livestock to be fed with the feed to be purchased under the program and who meet(s) the requirements of eligibility contained in § 1475.54. A person or persons who mortgage(s) livestock as security to obtain a loan shall be considered as the owner for the purposes of these regulations if they meet such requirements of eligibility. Notwithstanding any other provisions of this paragraph, livestock leased under a contractual agreement which has been in effect at least six months on the date of application, which requires that the lessee furnish the feed for such livestock and which provides for a beneficial interest in such livestock such as the right to market a share of the increase shall be considered as being owned by the lessee. For purposes of this program an owner does not include prison farms, local or State governments, school districts, tax supported colleges or universities or any other tax supported entity.

(h) "Eligible feed" means any type of feed (feed grain, mixed feed, liquid supplemental feed, roughage, pasture, forage, etc.) that best suits the owner's livestock operation, is consistent with acceptable feeding practices and which was not produced by the applicant or upon which assistance has not been paid. Any type of feed not normally considered a feed grain, such as wheat, but which is purchased under the program for livestock feed shall be considered a feed grain when making determinations of feed loss and feed available under § 1475.55 (d) and (e).

(i) "Crop year" means a period beginning on the date the grazing of new pasture growth normally begins and ending 12 months later.

(j) "Substantial loss of production" means that the amount of feed produced on the farm (including pasture, forage and feed in storage) during the crop year is at least 40 percent below that considered by the approving officials as being normal production for the farm and constituting a loss of feed caused by a natural disaster. Any loss of feed production which the approving official considers is attributable to overgrazing or farming practices not recognized as being normal in the area shall not be included in determining loss of production.

(k) "Feeding period" means the period (1) beginning on the date of application and (2) ending on the date when additional feed is normally expected to become available but not later than the end of the grazing period when pasture is the only crop produced. At the request of the applicant, and with the concurrence of the county committee, the feeding period may be established for the period beginning on the date of the application and ending at the end of the crop year, if it is determined by the county committee that the nature and severity of the natural disaster warrant such action.

(l) "Livestock" means beef and dairy cattle, horses, mules, sheep, goats and swine. Buffalo and beefalo are also included when maintained on the same basis as beef cattle in support of the beef industry.

(m) "Eligible livestock" means livestock which have been owned by the applicant for at least six months prior to the date of application. Notwithstanding any other provision of this paragraph (m), it may include livestock owned less than six months when (1) purchased by the applicant as replacement breeding stock according to customary breeding operations; (2) inherited by the applicant; (3) purchased by the applicant as part of a complete farm operation; (4) born as offspring of eligible livestock defined in this paragraph (m); or (5) determined by the county committee and it is concurred in by a representative of the State committee that it is a normal practice for the applicant to purchase livestock for feeding and that the livestock were not acquired primarily to obtain program benefits. Horses and mules will be considered eligible livestock if kept for the production of food and fiber or used in a controlled breeding program. Eligible livestock does not include horses and mules (i) kept for recreational purposes; (ii) running wild or uncontrolled on the range; or (iii) kept in excess of the number needed to produce food and fiber on the farm, unless they are actually used in a controlled breeding program.

(n) "Eligible animal units" means "eligible livestock" computed as follows: (1) Two units—one dairy cow or one bull two years old or more.

(2) One unit—one horse, mule, bull, cow, heifer, or steer one year old or more (excluding dairy cows and bulls two years old or more); two cattle, horses, or mules less than one year old and more than six months old; three calves or colts less than six months old; three swine over six months old; five swine less than six months old; five sheep or goats (excluding lambs and kids); or seven lambs and kids.

(o) "Dairy cow" means a cow which is owned or leased for the purpose of producing milk for home use or sale.

(p) "Natural disaster" means flood, drought, fire, hurricane, earthquake, storm or other natural disaster, including excessive rain, hail, unseasonable frost and high winds.

[43 FR 26413, June 20, 1978, as amended at 45 FR 56330, Aug. 25, 1980]

§ 1475.53 Availability

Benefits under the program shall be available to any owner of livestock which are maintained in the United States, including Puerto Rico, Guam, and the Virgin Islands, who: (a) Has suffered during the crop year, a substantial loss of livestock feed normally produced on land owned (or operated under a bona fide lease) by the livestock owner, and (b) has filed an application for assistance under the Emergency Feed Program not later than April 8, 1982, except that with respect to such applications which are filed after March 9, 1982, benefits will be provided under the program only for livestock feed which is purchased by the livestock owner not later than March 9, 1982.

(Sec. 1105 of the Food and Agriculture Act of 1977, 91 Stat. 955, as amended (7 U.S.C. 2267))

[47 FR 9982, Mar. 9, 1982 and 47 FR 34357, Aug. 9, 1982]

§ 1475.54 Owner eligibility.

Subject to the other terms and conditions in this subpart, the owner may be approved for assistance in purchasing feed for eligible livestock if in the judgment of the approving officials the following eligibility requirements are met:

(a) *General.* (1) The disaster has caused a substantial loss of production of feed normally produced on the farm operated by the owner, (2) the owner does not have sufficient feed for the livestock, and (3) the owner is required to purchase a quantity of feed greater than normal.

(b) *Location of holdings.* All of the applicant's holdings, including land, feed produced, feed on hand, etc., shall be considered regardless of location in determining eligibility.

§ 1475.55 Application and approval.

(a) *Who may apply.* Any owner of livestock may file an application under this program. When an application is filed, the applicant, if an individual, a partner if the applicant is a partnership, or a duly authorized representative of the owner in the case of any other person shall execute the certification contained in Form ASCS-645. If an application is filed in the name of a corporation, except a family corporation, the application must be accompanied by a certified copy of a resolution by the Board of Directors of such corporation authorizing its representative to file the application on behalf of said corporation.

(b) *Where to apply.* An application must be filed at a county office in the county where the records covering the major portion of the applicant's holdings are located or in a county agreeable to both the applicant and the county committees.

(c) *Filing of applications.* (1) The owner or a duly authorized representative shall furnish all the information required of the applicant on the application and shall certify that the owner meets the requirements specified in § 1475.54.

(2) Applications for feed assistance due to production losses which occur: (i) Between the beginning of the crop year and the end of the calendar year must be filed by December 31 of such year, or (ii) between January 1 and the end of the crop year must be filed within 30 days after the disaster occurs.

(d) *Determining loss of production.* (1) The current crop year acreage and yield of crop(s) used to feed eligible livestock including pasture and the normal yield for such crop(s) shall be converted to grain equivalent and used in arriving at the amount of feed lost because of the disaster: *Provided,* That pasture loss shall not be computed for any type of animal unit which does not, and normally would not, utilize pasture during the feeding period and shall not be based on animal units in excess of the normal carrying capacity of the pasture.

(2) Loss of production may include feed stocks produced on the farm in the current crop year which were damaged or destroyed by a natural disaster while in storage provided that feed stocks not totally destroyed must be appraised for their remaining value as livestock feed.

(3) Any loss of production otherwise computed shall be reduced: (i) by the amount of loss attributable to an acreage of pasture for which any deferred grazing payment may have been earned in the current crop year; (ii) by the amount of any payment under the Disaster Payment Program for feed grain computed in accordance with Part 713 of this chapter and (iii) by the amount of any benefits received through insurance or any other indemnification for current year feed lost either in storage or during production. Where the feeding period begins prior to July 1, 1980 such payment or reimbursement shall be converted to grain equivalent based on the larger of four cents per pound or the local market buying price of the crop at the time the application is filed. Where the feeding period begins on or after July 1, 1980, such payment or reimbursement shall be converted to grain equivalent based on the larger of six cents per pound or the local market buying price of the crop at the time the application is filed.

(e) *Determining feed available.* (1) The total quantity of feed available to the owner shall be the quantity owned and on hand as of the date of application, in grain equivalent, plus any prior or current crop year feed sold or contracted for sale during the current crop year including any grain under loan.

(2) The amount of feed otherwise determined to be on hand shall be (i) reduced by the amount of any purchased feed on hand; (ii) increased by the amount of any payment under the Disaster Payment Program for feed grain computed in accordance with Part 713 of this chapter and the amount of any benefits received through insurance or any other indemnification for current year feed lost either in storage or during production. Where the feeding period begins prior to July 1, 1980, such payment or reimbursement shall be converted to grain equivalent based on the larger of four cents per pound or the local market buying price of the crop at the time application is filed. Where the feeding period begins prior to July 1, 1980. Where the feeding period begins on or after July 1, 1980, such payment or reimbursement shall be converted to grain equivalent based on the larger of six cents per pound or the local market buying price of the crop at the time the application is filed.

(3) The determination of feed on hand shall exclude any feed grain (i) reserved specifically for consumption by poultry or for use as seed to plant crops on the owner's farm(s) for the next harvest or (ii) of the prior crop year placed in storage under the Farmer Held Grain Reserve Program, or used as collateral for a loan and any feed (hay, grain, etc.) purchased for resale. Feed utilized in a feedlot for the commercial feeding of livestock is not considered feed purchased for resale and shall be included as feed available.

(f) *Quantities of feed assistance.* (1) The gross feed allowance shall not exceed the smaller of 10 pounds per day per animal unit, or whatever lesser quantity is established by the State committee or county committee, times the number of days in the feeding period times the eligible animal units.

(2) The net feed allowance shall be the smaller of: (i) The gross feed allowance less the total quantity of feed (feed grain, hay, silage, pasture and range converted to feed grain equivalent) determined by the approving officials to be available to the owner for feeding eligible livestock during the feeding period, or (ii) the quantity the approving officials determine to be adequate considering the total quantity of feed determined to be available to the owner for feeding eligible livestock during the feeding period because of the emergency.

(3) The total allowance for the entire feeding period shall be the smaller of the net allowance or the amount of feed production lost by the applicant.

(g) *Approval of applications.* The county committee or its designee shall review each application filed.

(1) Approving officials are as follows: (i) The county committee or its designee is authorized to approve or disapprove all applications provided the applicant is not an ASC committee member or an ASCS employee. (ii) The State committee or its designee is authorized to approve or disapprove applications of county committee members and ASCS employees. (iii) DASCO or its designee shall approve or disapprove applications of State committee members. All applications forwarded to higher authority for consideration shall be accompanied by committee recommendations.

(2) No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and other information, including knowledge of the county and State committee members concerning the owner's normal operations shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or not clear and sufficient information is not otherwise available as to the owner's operations to make a determination as to the owner's eligibility, the application shall not be approved until sufficient additional information is provided.

(3) The owner shall be notified in writing of (i) the action taken on the application by the approving officials and (ii) the applicant's right to appeal.

[43 FR 26413, June 20, 1978, as amended at 45 FR 56330, Aug. 25, 1980]

§ 1475.56 Amount of assistance.

(a) Based on the presentation of acceptable evidence of purchase, the owner shall be reimbursed at the rate of 50 percent of the cost of eligible feed purchased (1) not to exceed two cents per pound of feed grain equivalent for feeding periods beginning prior to July 1, 1980 and (2) not to exceed three cents per pound of feed grain equivalent for feeding periods beginning on or after July 1, 1980. In no case may assistance be provided on an amount greater than the total feed allowance computed according to § 1475.55(f)(3).

(b) Acceptable evidence of purchase shall be limited to a sales document or receipt which (1) shall be signed by the seller (signature of seller may be waived when applicant certifies that signature is not convenient to obtain and the county committee is satisfied the document is a bona fide document), and (2) contains the date of purchase, amount, kind, price of feed purchased, and dates or expected dates of delivery.

(c) Eligible costs of purchase feed are limited to the purchase price at the point of possession and may include:

(1) Items of cost normally associated with the preparation of mixed feed.

(2) The cost of leasing or purchasing temporary pasture, range or other grazing: *Provided,* The resulting assistance does not exceed the smaller of 50 percent of the cost of the grazing per eligible animal unit per day or (i) 20 cents per day per animal unit for feeding periods beginning prior to July 1, 1980, or (ii) 30 cents per day per animal unit for feeding periods beginning on or after July 1, 1980.

(3) The cost of feed for eligible livestock in a feed lot: *Provided*, Assistance is limited to the smaller of 50 percent of the cost per eligible animal unit per day or (i) 20 cents per day per eligible animal unit for feeding periods beginning prior to July 1, 1980, or (ii) 30 cents per day per eligible animal unit for feeding periods beginning on or after July 1, 1980.

[43 FR 26413, June 20, 1978, as amended at 45 FR 56331, Aug. 25, 1980]

§ 1475.57 Disposition of feed and adjustment of net allowance.

(a) *Feed for livestock.* (1) Feed obtained under this subpart shall not be exchanged for other services, cash, credits, or any other thing of value.

(2) An amount of feed equal to that acquired under the program shall be fed to the applicant's eligible livestock.

(b) *Reporting changes.* (1) If there is a reduction in the number of eligible livestock, this fact shall be promptly reported to the county office.

(2) If additional feed becomes available to the owner from production on the farm (including pasture) during the feeding period, this fact shall be promptly reported to the county office.

§ 1475.58 Violations.

(a) Any person who disposes of any feed for which reimbursement is made under this program in any manner other than as authorized by the Secretary, shall be subject to a penalty equal to the market value of the feed involved to be recovered by the Secretary in a civil suit brought for that purpose. In addition, such person shall be subject to a fine of not more than $10,000 or imprisonment of not more than one year or both.

(b) The issuance of a false sales document, the changing of dates or data on a sales document, or the making of a false statement in an application for assistance or other document, for the purpose of enabling the applicant to obtain a payment to which the applicant is not entitled, may subject the person issuing such document or making such changes in the dates or data or making such false statement to liability under applicable Federal civil and criminal statutes.

(c) The county committee may deny program participation to any person for a period of from one to three years, if it is determined that such person knowingly made a false statement for the purpose of obtaining benefits under the program.

§ 1475.59 Termination or suspension of the program.

The county committee may at any time suspend or terminate assistance under the program when it appears local conditions do not justify continuation of the assistance. The suspension or termination of the assistance shall not apply to any purchases made prior to the effective date thereof.

§ 1475.60 Appeals.

Any owner may obtain reconsideration and review of determinations affecting participation in the program in accordance with Part 780 of this chapter.

§ 1475.61 Performance based on misaction or misinformation.

Performance based on misaction or misinformation where such performance was rendered in good faith in reliance upon action or advice of a county or State committee or their authorized representative shall be handled in accordance with Part 790 of this chapter.

§ 1475.62 Assignments.

An applicant shall not assign any payment due or to come due under the regulations in this subpart.

§ 1475.63 Limitation of authority.

(a) State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO or its designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determinations made by a State or county committee.

§ 1475.64 Estates and trusts; minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person has authority to sign the applicable documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements: (1) The rights of majority have been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1475.65 Setoffs.

(a) If any indebtedness of the producer to any agency of the United States is listed on the county claims control record, payments due to the producer under the regulations in this part shall be applied, as provided in Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the producer of any right the producer would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1475.66 Overdisbursements.

A producer shall be liable for repayment of the amount by which any payment disbursed to the producer exceeds the amount of such payment authorized under the regulations in this subpart.

§ 1475.67 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any producer who is entitled to a payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The persons requesting such payment shall file Forms ASCS-325, "Application For Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent", as provided in that part.

§ 1475.68 Records and inspection thereof.

The producer, and any other person who furnishes information to such producer or to the county committee to enable the producer to receive a payment under this subpart, shall maintain any books, records, and accounts supporting any information furnished to the county committee for three years following the end of the year during which the application for payment was filed. The producer or any other person who furnishes such information to the producer or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

(Approved by the Office of Management and Budget under control number 0560-0029)

[43 FR 26413, June 20, 1978, as amended at 47 FR 745, Jan. 7, 1982]

PART 1476—SPECIAL INDEMNITY PROGRAMS

Subpart—Compensation for Certain Losses Resulting From the 1980 Soviet Embargo

Sec.

1476.1 General statement.
1476.2 Definitions.
1476.3 Payment for monetary losses.
1476.4 Procedure for claiming compensation.
1476.5 Determination and payment of compensation.

AUTHORITY: Sec. 2002, Pub. L. 98-181 (97 Stat. 1297); 15 U.S.C. 714b, 714c.

SOURCE: 49 FR 22263, May 29, 1984, unless otherwise noted.

Subpart—Compensation for Certain Losses Resulting From the 1980 Soviet Embargo

§ 1476.1 General statement.

This subpart implements section 2002 of Pub. L. 98-181 (97 Stat. 1297) (the "Act") by setting out the terms and conditions under which certain businesses may receive compensation from the Secretary of Agriculture for certain monetary losses sustained as a result of the imposition of the 1980 embargo on the exportation of certain commoditie to the Union of Soviet Socialist Republics. Section 2002 of the Act provides that the Secretary of Agriculture, out of funds available to the Commodity Credit Corporation and upon proper proof of loss, shall pay outstanding claims for losses resulting from the 1980 embargo sustained by businesses dealing in pork and frozen hog carcasses, edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products.

§ 1476.2 Definitions.

As used in this subpart:

(a) "CCC" means the Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

(b) "Claimant" means any individual, firm, corporation, partnership, association or other legal entity that was in the business of dealing with covered articles at the time of the 1980 embargo and is seeking payment for an outstanding claim from the Department in accordance with the provisions of this subpart.

(c) "Covered articles" means pork and frozen hog carcasses, edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products.

(d) "Department" means the United States Department of Agriculture, including CCC.

(e) "Eligible contract" means a contract between a claimant and the Union of Soviet Socialist Republics or any instrumentality thereof (USSR) for the sale of covered articles to the USSR or a contract between a claimant and a third party under which the claimant undertakes all the obligations of the third party under the third party's contract with the USSR for the sale of covered articles to the USSR, which—

(1) Was entered into prior to 9:00 p.m. E.S.T., January 4, 1980; and

(2) Could not be completed due to the imposition of restrictions on the exportation of certain commodities to the USSR under the 1980 embargo.

(f) "Outstanding claim" means a written claim presented to the Department (1) for monetary losses caused by inability to perform an eligible contract; (2) which was received by the Department on or before November 29, 1983; and (3) for which compensation has not been received.

(g) "1980 embargo" means the restrictions on exportation of certain commodities to the USSR announced by the President on January 4, 1980, and imposed under regulations issued by the U.S. Department of Commerce and published at 15 CFR 376.5, 386.7, and 399.1 (45 FR 1883, January 6, 1980) and effective as of 11:59 p.m. E.S.T., January 7, 1980.

§ 1476.3 Payment for monetary losses.

(a) The CCC shall pay, in accordance with the provisions of this subpart, outstanding claims for monetary losses sustained by any claimant due to the claimant's inability to fully perform an eligible contract.

(b) Monetary losses compensated under this subpart shall be limited to the claimant's actual losses arising from the claimant's inability to perform an eligible contract as determined in accordance with this section.

(1) Actual losses include the following items:

(i) Expenses incurred by the claimant after the eligible contract was entered into and before January 4, 1980, either in preparation for performance or in performance of the eligible contract, including expenses arising in connection with contracts with suppliers, service contracts, or other subordinate agreements entered into in order to facilitate performance of the eligible contract;

(ii) Necessary expenses incurred by the claimant after January 4, 1980, in mitigation of its losses caused by the claimant's inability to perform the eligible contract, including expenses incurred until the claimant could mitigate its losses; and

(iii) Other amounts determined by the Controller, CCC, to constitute a compensable monetary loss in accordance with this subpart.

(2) Actual loss does not include:

(i) The claimant's lost or anticipated profits from performance of the eligible contract;

(ii) Any cost that the claimant avoided by not having to perform the eligible contract or which the claimant otherwise recovered;

(iii) Any interest, except interest incurred in mitigation of the claimant's losses as provided by § 1476.3(b)(1)(ii); and

(iv) Other amounts determined by the Controller, CCC, not to constitute a compensable monetary loss in accordance with this subpart.

(c) The claimant has the burden of proving his or her monetary losses and must submit documentation acceptable to the Controller, CCC, supporting the monetary loss claimed.

§ 1476.4 Procedure for claiming compensation.

In order for a claimant to receive compensation under this subpart, the claimant must notify the Controller, CCC, Room 6096-South, U.S. Department of Agriculture, 14th & Independence Avenue, SW., Washington, DC 20250, of the claimant's outstanding claim after November 30, 1983, but no later than July 31, 1984. Each claimant must prove, with documentation acceptable to the Controller, CCC, that the claimant has an outstanding claim with the Department, and that such claim is based on an eligible contract.

§ 1476.5 Determination and payment of compensation.

(a) The Controller, CCC, will determine the amount of compensation for monetary losses to be paid to a claimant in accordance with this subpart. A determination rendered by the Controller, CCC, may be appealed to the Executive Vice President, CCC, within 30 days after the determination.

(b) Interest will accrue on the amount of compensation ultimately found to be due the claimant by the Controller, CCC, beginning on the ninety-first day following receipt by the Controller, CCC, of the claimant's final documentation supporting the monetary loss claimed, in accordance with § 1476.3(c), or the ninety-first day following the effective date of this rule, whichever is latest, and ending on the date of payment. The interest will accrue at the same rate charged by CCC on delinquent debts and published in a notice in the FEDERAL REGISTER in accordance with 7 CFR 1403.5.

(c) As a condition of payment by the CCC, each claimant must sign a release which states that the payment received from the CCC is in complete satisfaction of all compensation due the claimant from the Department under these regulations and the Act.

PART 1480—INDUSTRIAL HYDROCARBONS AND ALCOHOLS PILOT PROJECTS

Sec.

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APPENDIX A—LOAN SERVICING BY LENDER

AUTHORITY: Sec. 1420, Pub. L. 95-113, 91 Stat. 998 (7 U.S.C. 2669).

SOURCE: 43 FR 29926, July 11, 1978, unless otherwise noted.

§ 1480.1 General.

Section 1420 of the Food and Agricultural Act of 1977, Pub. L. 95-113, (the Act) authorizes the Secretary of Agriculture (the Secretary) to initiate a pilot program for the production and marketing of industrial hydrocarbons from agricultural commodities and forest products. In the Act, "the Secretary is authorized and directed to formulate and carry out a pilot program for the production and marketing of industrial hydrocarbons derived from agricultural commodities and forest products for the purpose of stabilizing and expanding the market for such commodities and products and expanding the Nation's supply of industrial hydrocarbons." The Act also states that "the Secretary shall provide for four pilot projects for the production of industrial hydrocarbons and alcohols from agricultural commodities and forest products by guaranteeing loans not to exceed $15,000,000 per each such project, to public, private or cooperative organizations organized for profit or nonprofit, or to individuals for a term not to exceed twenty years at a rate of interest agreed upon by the borrower and lender." This section and the following sections of Part 1480 of this subchapter constitute regulations for submitting, evaluating, selecting, and approving applications for guaranteed loans under the Act. Project proposals conforming to the Act and these regulations will be considered by a panel of experts which will advise the Secretary concerning selection of pilot projects for loan guaranty under the Act.

§ 1480.2 Project description format.

Applications shall use the following project description format:

(a) *Project title:* Title should be descriptive and brief.

(b) *Date of submission.*

(c) *Organization:* The official name and address of the proposing organization.

(d) *Responsible officer:* The name and address of the official of the organization responsible for the project.

(e) *Designated contact official:* The name, address, and telephone number of the official working contact for the proposing organization.

(f) *Lender:* Name and address of potential lending agency, if known.

(g) *Qualifications of proposer:* Personal qualifications data of key personnel of proposer pertinent to project.

(h) *Objectives of project:* The objectives should establish specific pilot project goals of production, timing, information development, and followup.

(i) *Justification (in terms of Act):* Statement showing how the project would address purposes of section 1420 of the Food and Agriculture Act of 1977 and serve the national interest.

(j) *Raw materials and source area:* Statement should describe the raw materials availability, sources and alternatives, and describe the assembly process.

(k) *Process and flow diagrams:* Statement should contain a stepwise description of production, collection, processing, storage, transport and marketing.

(l) *Energy balance:* Statement should include a detailed analysis demonstrating how the project would meet the energy balance requirements of Pub. L. 95-113 and these regulations.

(m) *Products and byproducts, uses and markets:* Statement should list products, yields and their alternative uses and markets.

(n) *Flexibility of raw material and products:* Statement showing opportunities for using alternative raw materials and products in order to enhance economic return and energy output.

(o) *Plant location, sites:* Describe anticipated plant location and auxiliary sites and the respective advantages of these locations.

(p) *Facilities and equipment:* Describe proposed plant, facilities, equipment, and marketing arrangements.

(q) *Employment:* List numbers and categories of employees and expected payroll.

(r) *Construction and onstream timetable:* Tabulation or chart showing timetables for project construction, production start up and sales progress.

(s) *Amount of loan guarantee requested:* Loans requested and percentage of total cost of project.

(t) *Economic feasibility study:*

(1) *Capital costs:* Tabulation and description of investments, loans and repayment of capital.

(2) *Operating costs:* Tabulation and descriptions of operating expenses related to output.

(3) *Markets:* Description and demonstration of market potential, viability, and commitments.

(4) *Product output and value:* Tabulation of production, sales and returns.

(5) *Cost evaluation, economic information:* Cost summary to provide evidence of the payment time and economic viability.

(u) *External cooperators:* Identification of assistance groups (i.e., Federal, State, local, etc.).

§ 1480.3 Definitions and other requirements.

(a) "Project" means an undertaking by the borrower which when completed will result in the production of industrial hydrocarbons and/or alcohols from biomass and otherwise conform to the requirements of these regulations, and Pub. L. 95-113, section 1420.

(b) The industrial hydrocarbons and alcohols must be produced from "agricultural commodities and forest products." For the most effective implementation of the statute, the phrase "agricultural commodities and forest products" has been construed in the broadest sense as all forms of farm crops, vegetation, and residues. For that reason, as well as brevity of reference, the regulations equate the phrase with the term "biomass." "Biomass" includes, for example, such diverse materials as the grain and stalks of corn, wheat, and rice; cottonseed hulls; fruits and vegetables and their processing byproducts and residues; poultry and livestock manures and residues; wood products including bark, pulp, chips, and residues from logging and paper manufacturing; aquatic plants; and specific energy-farm crops.

(c) An industrial hydrocarbon must chemically consist of carbon plus hydrogen as the major constituent.

(d) Alcohols are a class of compounds which are hydroxyl derivations of hydrocarbons. "Alcohols" in these regulations may contain no more than 5 percent other constituents chemically bound to the alcohol molecule.

(e) Industrial hydrocarbons and alcohols in these regulations are primarily intended for nonfood and nonfeed uses, such as direct fuels or industrial energy-type raw materials.

(f) Alcohols and/or industrial hydrocarbons must be major products in a project.

(g) Total energy content of the products and byproducts manufactured in the operation must exceed the total energy input from fossil fuels used in the manufacture of such products and byproducts. For projects which propose to operate using raw materials or feedstocks which are residues of crop, forestry, or animal production or which constitute agricultural commodities of below market grade, only the energy used for the collection and for the process of conversion to hydrocarbons or alcohols will be counted in determining the energy balance. For projects which propose to use as feedstocks commercially marketable agricultural commodities, the fossil fuel used for the growing of the crop through final processing is part of the energy producing system and will be counted in determining the energy balance. The estimation of fossil fuel inputs used in production of different crops will be based upon the publication: Energy and U.S. Agriculture, 1974 Data Base Vol. 1 FEA, USDA September 1976 (FEA/D-76/459).

§ 1480.4 Environmental considerations.

(a) Applicant must present adequate environmental impact information. For a proposed project being actively considered for a loan guaranty, an environmental assessment will be prepared by the responsible Federal official and utilized to determine the environmental consequences of the proposed project.

(1) If, as a result of the above assessment, the Secretary determines that undertaking the proposed project will have a significant effect on the quality of the human environment, an environmental statement in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 will

be prepared and issued by the responsible Federal official.

(b) If the Secretary determines that undertaking the proposed project will not have a significant effect on the quality of the human environment, a negative determination will be prepared prior to final action on the guaranty application.

(c) Nothing in this regulation shall be construed to modify requirements imposed on the borrower or lender by Federal, State and local government agencies in connection with permits, licenses, or other authorization to conduct or finance these activities.

§ 1480.5 Trade secrets.

Subject to requirements of the Freedom of Information Act, other laws and these regulations, trade secrets, commercial and financial information and data (including maps) which the borrower makes available to the Secretary during the preliminary discussion or at any other time throughout the duration of the project on a privileged or confidential basis, will be so treated and will not be publicly disclosed without the prior written approval of the borrower. In order to assist in carrying out this provision, information deemed by the borrower or lender to fall within one of the foregoing categories shall be identified and appropriately marked by the borrower or the lender.

§ 1480.6 Evaluation criteria.

(a) Proposed projects must meet the criteria of Pub. L. 95-113 and of these regulations. Total energy content of the products and byproducts manufactured in the operation must exceed the total energy input from fossil fuels used in the manufacture of such products and byproducts. The operation as a whole is designed to demonstrate economic feasibility. The technology used in the operation is potentially applicable at other locations on a regional or national scale.

(b) Additional criteria for evaluation of projects will also be considered, which further the purposes of the Act and provide for stabilization and expansion of the market for agricultural commodities and forest products, expansion of the Nation's supply of industrial hydrocarbons and alcohols, reduction of requirements for fossil fuels in production, conversion, marketing and utilization of biomass for alcohols and hydrocarbons, demonstration and utilization of new technological advances, diversity of feedstocks, conversion processes, products and by-products, and most favorable environmental impact.

§ 1480.7 Project monitoring and reports.

(a) The guaranty agreement shall provide that employees and representatives of USDA shall have access to the project site. To the extent lawful and within their control, the lender and borrower will assure availability of such information related to the project as is necessary to permit the Secretary to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the guaranty.

(b) An annual progress report on each pilot project, not to exceed 12 pages, will be required from the borrower. The annual reports will be organized around the objectives, the installations, the processes, the production goals, and timetables. The annual reports will be due on September 30 of each fiscal year of the project.

(c) A comprehensive report covering all findings, accomplishments, and cost evaluations will be prepared at the end of the first 5 years. The purpose of this report will be to obtain fullest definitive information on the economic and technical feasibility of larger-scale application of the processes tested in the pilot project. The comprehensive report will use the following format:

Title page.
Foreword.
Abstract.
Tables and figures.
Definitions, abbreviations, symbols.
Acknowledgements.
Chapters:
  1. Introduction.
  2. Findings and conclusions.
  3. Recommendations.
  4. Raw materials, process and products.
  5. Marketing and utilization.
  6. Financing and cost analysis.
  7. Economic analysis and feasibility of scale-up.

§ 1480.8 Patent and proprietary rights.

(a) Patents and other proprietary rights accruing to the borrower and resulting from the project will remain with the borrower, except that such rights shall be, in the case of default, treated as project assets in accordance with terms and conditions in the guaranty agreement.

(b) The guaranty agreement may provide that patents or other proprietary intellectual property rights utilized in or resulting from the project, which are owned or controlled by the borrower, shall be made available to other domestic parties upon reasonable terms and conditions which protect the confidentiality of information, if such action is determined by the Secretary to be in the public interest.

§ 1480.9 Loan guaranty criteria.

(a) The Secretary may enter into agreements to guarantee lenders against the loss of principal and accrued interest on loans made by such lenders to qualified borrowers. Such agreements can be entered into only for the purposes of design, construction, and operation of equipment or facilities for the production of industrial hydrocarbons and alcohols from biomass.

(b) A loan application which meets a lender's standard without a Federal guaranty will be regarded by the Secretary as not eligible for a loan guaranty under this regulation. No loan shall be guaranteed if the income from such loan or the income from obligations issued by the holder of such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1954.

(c) A guaranty may be made only if the following conditions are met as determined by the Secretary:

(1) The amount of a guaranty for any loan for a project does not exceed $15,000,000.

(2) The guaranty as to principal shall apply only to so much of the principal amount of the loan as does not exceed 90 percent of the estimated aggregate cost of the project with respect to which the loan is made. However, there is no prohibition against the guaranty being equal to 100 percent of the loan to be made by the lender.

(3) The lender has set forth reasons why the loan would not be made to the borrower without a Federal loan guaranty.

(4) The terms of the loan require full repayment over a period of no more than 20 years.

(5) The loan bears interest at a rate agreed upon by the borrower and lender and approved by the Secretary.

(6) The project is to be performed in the United States, its territories or possessions, or on property owned or leased by the United States outside the United States, its territories or possession.

(7) The terms and conditions set forth in the loan agreement are acceptable to the Secretary.

(8) The borrower and any nonguaranteed lender agree in writing that (i) the terms and conditions set forth in a nonguaranteed loan agreement relating to the project shall be acceptable to the Secretary and (ii) the nonguaranteed loan shall be subordinate to the guaranteed loan.

§ 1480.10 Supporting loan guaranty information.

(a) The lender and borrower shall provide information in support of the application such as described by the following items:

(1) Full description of the scope, nature, extent, and location of the proposed project.

(2) A written affirmation by the lender supporting the necessity for a Federal loan guaranty.

(3) Evidence supporting the borrower's ability to complete the project in a timely and efficient manner.

(4) Agreed upon interest rate to be charged by the lender.

(5) Period of repayment not to exceed 20 years and amount of the loan and the percent of the project cost to be guaranteed.

(6) A detailed budget-type breakdown of both the estimated aggregate cost of the project and the amount to be borrowed.

(7) Evidence showing that the amount of the loan together with

equity or other financing will be sufficient to carry out the project.

(8) The borrower's plan to pay interest charges and repay the loan, including assumptions regarding marketability of the project's results or product.

(9) The aggregate amount of guaranty commitments and/or guaranteed loans outstanding made to the borrower under the provisions of this regulation.

(10) Where relevant to the purpose of the loan guaranty, a copy of the borrower's title or lease agreement to the property, supported by title opinion or other locally acceptable evidence of the borrower's interest, on which the project is to be carried out.

(11) Information covering the management experience of each officer or key person in the borrower's organization who is to be associated with the project.

(12) A description of the borrower's management concept and business plan or plan of operations to be employed in carrying out the project.

(13) A description of the project's technical and economic feasibility.

(14) A description of the intended sources and amount of capital and its form (equity, loans from principals, loans from the lender, outside financing, or factoring) together with evidence of a commitment from these sources and a copy of each such agreement, and evidence of the financial ability of each source to honor its commitment.

(15) A copy of the loan agreement to be executed by the lender and borrower.

(16) A listing of assets associated or to be associated with the project, including appropriate data as to the useful life of any physical asset, and any other security for the loan and guaranty agreement.

(17) A description of other Federal financial assistance (e.g., direct loans, guaranteed loans, grants, contracts) available to the borrower in connection with the project.

(18) A description of the processes and methods the borrower plans to utilize.

(19) Copies of all applications when filed, and approvals when issued by Federal, State, and local government agencies, for permits and authorizations to conduct operations associated with project.

(20) A description of the borrower's organization and a copy of the business certificate, partnership agreement or corporate charter, bylaws and appropriate authorizing resolutions.

(21) The lender's written assessment of all aspects of the borrower's loan application in sufficient detail as would be completed by any prudent lender considering a loan without a guaranty together with copies of investigations from credit bureaus, references, bank inquiries, and professional organizations.

(22) Written assurance from guaranteed and, when appropriate to the project, nonguaranteed lenders that the loan amounts as well as terms and conditions imposed by such lenders will not be altered in any significant respect without approval of the Secretary.

(23) A description of salaries (and other financial remuneration including profit sharing and stock options) to be paid to officers and employees of the borrower that are, or will be, directly associated with the project.

(24) Evidence of consultation conducted by the borrower with appropriate agencies of any affected State regarding the proposed project.

(b) In addition to supporting information illustrated in paragraph (a) of this section, the Secretary may independently obtain or may require the lender to include with the guaranty application the filing of information regarding the lender as deemed necessary by the Secretary including but not limited to:

(1) Description of the lender's organization and a copy of the business certificate, partnership agreement or corporate charter, bylaws, and appropriate authorizing resolutions demonstrating the lender's competence to administer loan terms and conditions.

(2) Copies of investigations obtained from credit bureaus, reference and bank inquiries, and professional associations.

(3) Descriptions covering the management experience of each officer or key person in the lender's organization

who is or will be associated with the loan.

(4) A description of the management concept to be employed by the lender in surveillance of the loan.

(5) When appropriate to the project, evidence of the lender's experience in surveying the financial aspects of complex technological projects.

(c) The Secretary shall consider the application and other relevant information and shall be responsible for (1) determining whether the application is in compliance with this regulation; (2) assessing and evaluating the financial, technical, environmental, management, and marketing aspects of the project.

(d) Information required by this section on the lender and loan details need not accompany the proposal and may be supplied when requested by the Secretary.

§ 1480.11 Closing.

The major activities leading to the closing of the guaranty agreement include the following:

(a) When an application for a loan guaranty has been approved by the Secretary, the Secretary will so notify the lender and the borrower and provide them with a copy of the proposed guaranty agreement.

(b) The Secretary shall arrange with the lender and the borrower for the preparation and review of necessary documents and agree upon a date for execution of a guaranty agreement.

§ 1480.12 Loan disbursements by lender.

Unless otherwise provided in the guaranty agreement, the lender shall not make any disbursement on the loan until it has followed notification requirements as set forth in Appendix A, section (c)(1), and has received written notice from the Secretary that disbursement is approved.

§ 1480.13 Preservation of collateral.

Unless otherwise provided in the loan guaranty documents, upon default by the borrower, the holder of collateral associated with project shall take actions such as the Secretary may reasonably require to provide for the care, preservation, and maintenance of such collateral so as to achieve maximum recovery upon liquidation of collateral, security and guarantees for the loan. The lender shall not waive or relinquish, without the consent of the Secretary any collateral or guaranty for the loan to which the Government would be subrogated upon payment under the guaranty agreement to the lender.

§ 1480.14 Security with respect to borrower's assets.

Each loan guaranteed under this regulation will be secured by liens or assignments of rights in assets associated with the project, or such other security specified in the guaranty agreement as the Secretary may determine to be reasonably required to protect the interests of the United States.

§ 1480.15 Treatment of payments.

When the lender holds a guaranteed and nonguaranteed portion of a loan, payments of principal made by the borrower in accordance with the loan agreement shall be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis.

§ 1480.16 Assignment and incontestability.

(a) Except as may be required by law, the lender may assign to another lender rights and obligations under the loan or guaranty agreement only with the prior written consent of the Secretary.

(b) The lender may provide other lenders with participating shares in the loan without the prior consent of the Secretary. Written notice shall be given by the lender to the Secretary and the borrower when participating shares are so provided. However, the original lender shall continue to be responsible for and perform the provisions of the guaranty agreement pertaining to the lender, unless the Secretary approves a substitute lender.

(c) The guaranty agreement shall be conclusive evidence that the guaranty and the underlying loan are in compliance with the provisions of Pub. L. 95-113, section 1420, and this regulation and that such loan has been approved and is legal as to principal and interest and other terms. Such a guaranty shall be valid and incontestable by the Government except for fraud or misrepresentation by the holder of the obligation.

§ 1480.17 Mandatory purchase of flood insurance.

The Flood Disaster Protection Act of 1973 (Pub. L. 92-234) may require purchase by the borrower of flood insurance as a condition of receiving a guaranty on loans for acquisition or construction purposes in an identified flood plain area having special flood hazards.

§ 1480.18 Effective date and proposal receipt date.

This Part 1480 shall become effective July 11, 1978. Pilot Project Loan Guaranty proposals to be considered under these regulations must be received on or before October 16, 1978, by Mr. Harry Brown, Office of Energy, Room 3812 South Building, U.S. Department of Agriculture, 12th and Independence Avenue SW., Washington, DC 20250.

APPENDIX A—LOAN SERVICING BY LENDER

Loan guaranty agreements approved in accordance with this regulation shall provide that:

(a) The lender shall exercise such care and diligence in the disbursement, servicing, and collection of the loan as would be exercised by a reasonable and prudent lender in dealing with a loan without guaranty.

(b) The loan agreement shall provide the customary period of grace for the making of any payment of principal or interest. However, the lender shall not grant to the borrower any further extension of time over and above any period of grace for the making of any payment in whole or in part under the loan agreement without the prior written consent of the Secretary.

(c) The lender shall notify the Secretary in writing without delay:

(1) That the first disbursement is ready to be made, together with evidence from the borrower that the Project has commenced or is about to commence.

(2) At monthly, or at other agreed upon intervals, of the date and amount of each subsequent disbursement under the loan.

(3) Of any nonpayment by the borrower of principal or interest as required by the loan agreement, if such nonpayment is not cured within the grace period, together with evidence of appropriate notifications made by the lender to the borrower.

(4) Of any failure, known to the lender, by an intended source of capital to honor its commitment.

(5) Of any failure by the borrower, known to the lender, to comply with terms and conditions as set forth in the loan agreement or guaranty agreement.

(6) When the lender believes that the borrower may not be able to meet any future scheduled payment of principal or interest.

(d) In the event the lender retains the option to accelerate payment of the borrower's indebtedness, the lender shall not do so without the prior written consent of the Secretary.

SUBCHAPTER C—EXPORT PROGRAMS

PART 1487—NONCOMMERCIAL RISK ASSURANCE PROGRAM

Subpart—Assuring Against Defaults Caused by Noncommercial Risk Occurrences

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1487.15 Communications.

AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c(f)).

Subpart—Assuring Against Defaults Caused by Noncommercial Risk Occurrences

SOURCE: 43 FR 4033, Jan. 31, 1978, unless otherwise noted.

GENERAL

§ 1487.1 General statement

(a) This part contains the regulations governing the Commodity Credit Corporation noncommercial risk assurance program, also referred to herein as "GSM-101." Exporters of U.S. agricultural commodits usually require importers to guarantee payment of the selling price of commodities sold on a deferred payment basis. The guarantee may be in form of an irrevocable foreign bank letter of credit in favor of the exporter who may draw drafts for the deferred payments to be presented to the foreign bank as such payments become due. Or the foreign bank letter of credit may authorize the exporter to draw drafts on and for acceptance by a U.S. correspondent bank of the foreign bank. In either case, the exporter may discount the receivable with a U.S. bank or financial institution so that he may realize the proceeds of his sale prior to the deferred payment dates. GSM-101 is designed to protect the exporter or his assignee against loss from noncommercial risk defaults in payments by a foreign bank under the letter of credit issued by the foreign bank to secure payments called for by the export credit sales agreement, or under a related obligation arising from the foreign bank's letter of credit. By transferring the noncommercial risk of loss from exporters and their financing institutions to CCC, GSM-101 is intended to: (1) Facilitate exportation, (2) forestall or limit declines in exports, (3) permit exporters to meet competition from other countries, and (4) increase commercial exports of U.S. agricultural commodities.

(b) GSM-101 will be administered by the Office of the General Sales Manager, U.S. Department of Agriculture.

(c) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to shipment of commodities assured as to noncommercial risks under GSM-101.

(d) GSM-101 will be supplemented by USDA announcements.

§ 1487.2 Definition of terms.

(a) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, or his designee.

(b) "Assured value" means the maximum amount CCC agrees to pay the exporter under the assurance agreement. The assured value shall not exceed the unpaid balance of the port value of the commodity prior to shipment plus interest as indicated in the export credit sale but not more than 6 percent per annum on such unpaid balance to the date(s) payment is due.

(c) "Assurance agreement" means the written agreement under which CCC undertakes, for a period not exceeding 3 years after export, to protect the exporter or assignee from defaults by a foreign bank caused by noncommercial risks under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's related obligation under its letter of credit to the exporter.

(d) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(e) "Date of export" means the onboard date of an ocean bill of lading or onboard ocean carrier date of an intermodal bill of lading.

(f) "Date of sale" means the earliest date the exporter has knowledge that a contractural obligation exists with the importer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(g) "Export credit sale" means an agreement by an exporter to sell eligible U.S. agricultural commodities for U.S. dollars to an importer. The agreement shall provide for export of the commodities from the United States to eligible countries within 12 months from the contract date and for payment by the importer on a deferred payment basis not exceeding 36 months from the date(s) of export.

(h) "Exporter" means an individual, group of individuals, partnership, corporation, association, cooperative, or any other entity: (1) That is financially responsible, (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, and (3) not suspended or debarred from contracting with or participating in any program administered by CCC on the date of issuance of the assurance agreement.

(i) "Foreign bank letter of credit" means (1) an irrevocable commercial letter of credit providing for deferred payments and issued in favor of the exporter by a banking institution in the destination country pursuant to an export credit sale requiring payment in U.S. dollars; or (2) an irrevocable commercial letter of credit issued in favor of the exporter by a banking institution in the destination country pursuant to an export credit sale requiring payment in U.S. dollars, which is supported by a related obligation providing for deferred payment in U.S. dollars from the banking institution issuing the letter of credit to a financial institution in the United States.

(j) "Importer" means a foreign buyer who enters into an export credit sale contract on a deferred payment basis with a U.S. exporter.

(k) "Noncommercial risk" means the risk of loss as a result of (1) failure by the foreign bank, through no fault of its own, to make remittances pursuant to its letter of credit or related obligation arising out of the letter of credit because of: (i) War, hostilities, civil war, rebellion, insurrection, or civil commotion; or (ii) expropriation, confiscation, or like action by government; or (iii) the imposition by governmental authority of any order, decree, or regulation of general applicability having the force of law; or (iv) the failure of the central exchange authority to transfer local currency into dollars; or (2) failure of the foreign bank to make payments for any reason, if it is an instrumentality of or is wholly-owned by the foreign government.

(l) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(m) "Port value" means the total value of the export credit sale, less any discounts or allowances, basis f.a.s. or f.o.b. at U.S. ports. Such value shall include the value of the upward loading tolerances, if any, as provided for by the export credit sales contract.

(n) "USDA announcement" means an announcement issued by the U.S. Department of Agriculture supplementing these regulations. As announcement may include identification of eligible agricultural commodities and countries, dollar limitation of

CCC exposure in a country and other information.

[43 FR 4033, Jan. 31, 1978, as amended at 43 FR 59078, Dec. 19, 1978; 46 FR 9556, Jan. 29, 1981]

ASSURANCE AGAINST NONCOMMERCIAL RISK DEFAULTS

§ 1487.3 Application for assurance agreement.

(a) An exporter shall submit a written application for an assurance agreement to the office specified in § 1487.15. An application may be made by telephone, but it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following:

(1) Name of the destination country.

(2) Name and address of importer.

(3) Date of sale.

(4) Exporter's sale number.

(5) Delivery period.

(6) Kind and description of the commodity.

(7) Quantity.

(8) Port value.

(9) Assured value.

(10) Estimated payment schedule(s) for each shipment to be made under the assurance agreement showing the estimated payment due dates and estimated amounts due separately for both principal and interest.

(b) An application for an assurance agreement may be rejected, approved with modifications, or approved as submitted by the Assistant Sales Manager. In the event the application is approved, the Assistant Sales Manager shall cause an assurance agreement to be issued in favor of the U.S. exporter.

§ 1487.4 Assurance agreement.

(a) The assurance agreement shall provide that CCC will pay the U.S. exporter or his assignee in U.S. dollars for losses resulting from the failure of the foreign bank which issues the bank letter of credit securing the export credit sale to honor drafts drawn upon it or otherwise to remit amounts properly due the exporter or the assignee, when such defaults are caused by the occurrence of noncommercial risks arising after export.

(b) The assurance coverage shall become effective on the date(s) of export(s) and continue in force for the period covered by the payment schedule not exceeding 36 months from the dates of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for an assurance agreement or exports made after the final date for export shown on the assurance agreement or amendment thereof are ineligible for assurance coverage, except where it is determined to be in the interest of CCC.

(c) The assurance agreement may contain such terms, conditions, and limitations not inconsistent with GSM-101 as are deemed necessary or desirable by the Assistant Sales Manager.

(d) The assurance agreement may be amended by the parties thereto provided such amendment is in conformity with GSM-101 at the time of amendment. Amendments may include a change in the credit period or an extension of time to export. Any amendment of the assurance agreement may be subject to an increase in the assurance fee. Any amendment shall indicate its effective date and shall apply only to exports made on or after that date.

ASSURANCE RATES AND FEES

§ 1487.5 Assurance rates.

The assurance rates will be based upon the length of the payment terms provided by the export credit sale contract, the degree of risk that CCC assumes, and any other factors which CCC believes should be considered. Assurance rates charged by CCC under GSM-101 will be available upon request from the office specified in § 1487.15.

§ 1487.6 Assurance fees.

(a) The assurance fee will be computed on the basis of the assurance rate and the assured value.

(b) The exporter shall remit, with his written application, the full amount of the fee based on the applicable rate. If the application is submitted by telephone, telex or TWX, final approval of the application will not be given until the fee has been recieved by CCC. Approval of the application will be final and refund of the assurance fee will not be made after approval unless the Assistant Sales Manager determines that such a refund will be in the interest of Commodity Credit Corporation.

(c) If the application for an assurance agreement is not approved or is approved only for a part of the coverage requested, a full or pro rata refund of the remittance will be made. The assurance fee shall be made payable to CCC and mailed to the office specified in § 1487.15.

DOCUMENTS REQUIRED AFTER EXPORT

§ 1487.7 Evidence of export.

(a) The exporter shall provide a written report to the office specified in § 1487.15 within 20 days following each export covered under the assurance agreement. This report shall include the following:

(1) Assurance agreement number.

(2) Date of export.

(3) Exporter's sale number.

(4) Port value exported.

(5) Kind, quantity, and description of the commodity exported.

(6) Statement that the agricultural commodities of the grade, quality, and quantity called for in his sales contract with the foreign importer have been exported.

(7) A statement that he has in his files documents evidencing the obligation of the foreign importer and that he will retain such documents in his files until three years after maturity or the related assurance agreement.

(8) A statement that a letter of credit has been opened in favor of the exporter to cover the port value of the commodity exported.

(9) A payment schedule showing the payment due dates and amounts due separately for both principal and interest for which credit has been extended to the importer.

(b) If the report required by paragraph (a) of this section is not received by CCC within 20 days after the date of the export, the assurance agreement shall become null and void with respect to defaults in payments applicable to such export. This provision may be waived by the Assistant Sales Manager for good cause shown.

LOSSES CAUSED BY NONCOMMERCIAL RISK DEFAULTS

§ 1487.8 Notice of default.

(a) If the foreign bank issuing the letter of credit fails to make a remittance pursuant to the terms of the letter of credit or a related obligation arising under the letter of credit and such default appears to be attributable to the occurrence of a noncommercial risk, the exporter or the assignee shall promptly furnish a written notice of default to the Treasurer, CCC at the address indicated in § 1487.11(b). The notice shall include the assurance agreement number, the amount due, the date of refusal to pay, and reason for the default.

(b) Within 30 days after the notice of default, the exporter or the assignee shall furnish a claim for loss with the following information and documents to the Treasurer, CCC:

(1) Assurance agreement number.

(2) A certification that the scheduled payment has not been received.

(3) A copy, certified as true and correct by the exporter, of each of the following:

(i) Foreign bank letter of credit securing the export credit sale or the related obligation of the foreign bank under its letter of credit.

(ii) Export credit sales contract.

(iii) Ocean carrier or intermodal bill(s) of lading with onboard ocean carrier date for each shipment.

(iv) Invoice(s) showing the port value of the commodities exported.

(c) A claim for a loss by the exporter or assignee shall not be honored if it is not made in writing to the Treasurer, CCC prior to the expiration of six months from the date of default of the scheduled payment.

§ 1487.9 Payment of loss.

(a) Upon receipt of the information required under § 1487.8, and such evidence as CCC may deem necessary for the purpose of establishing that the loss was occasioned by the occurrence of a noncommercial risk default, CCC shall promptly determine whether or not a loss has occurred for which CCC is liable under the applicable assurance agreement and these regulations.

CCC will promptly notify the exporter of its detemination.

(b) CCC's maximum liability will be limited to the assured value as shown in the assurance agreement. If the assured value covers only a percentage of the port value exported, the liability of CCC shall be limited to such percentage of the loss.

(c) CCC shall only honor claims for losses on amounts not paid as scheduled. CCC shall not honor claims for amounts due under an accelerated payment clause in the export credit sales contract or the letter of credit or any related obligation under the letter of credit unless it is determined to be in the interest of CCC by the Assistant Sales Manager.

(d) If CCC determines that it is liable to the exporter and/or his assignee, the exporter and/or his assignee shall execute and submit to CCC an instrument, in form and substance satisfactory to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale. After receipt of an instrument of subrogation, CCC will remit the amount of the loss plus interest, at the Federal Reserve Bank of New York discount rate in effect on the date of default, beginning with the 31st day after notice of default was received by CCC and continuing to the date payment is made by CCC.

(e) Upon payment of a claim to the exporter or his assignee, the exporter or his assignee shall cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

(f) Notwithstanding any other provision of the regulations set forth in this subpart to the contrary, with regard to commodities shipped to which the payment guarantee is applicable, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that (1) the exporter complies with the reporting requirements under § 1487.7 and (2) the exporter or the exporter's assignee furnishes the statements, documents and evidence specified in §§ 1487.8 and 1487.9.

[43 FR 4033, Jan. 31, 1978, as amended at 46 FR 9556, Jan. 29, 1981]

§ 1487.10 Recovery of losses.

(a) Upon payment of loss to the exporter or his assignee, CCC will notify the importer and/or the foreign bank of its rights under the subrogation agreement to recover all monies in default.

(b) In the event monies for the defaulted payment are received by the exporter or the asignee from the importer, foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC.

(c) Recoveries made by CCC from the importer or foreign bank and recoveries received by CCC from the exporter or assignee or any other source shall be allocated by CCC to the exporter or assignee and CCC on a pro rata basis as their respective interest may appear.

(d) Notwithstanding any other terms of the assurance agreement, the exporter shall be liable to CCC for any amounts paid by CCC under the assurance agreement when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by him for the purpose of obtaining the assurance agreement.

MISCELLANEOUS PROVISIONS

§ 1487.11 Assignment.

(a) The exporter may make an assignment of proceeds payable by CCC under the assurance agreement to only a bank or other financing institutions in the United States. The assignment shall cover all amounts payable under the assurance agreement not already paid and shall not be made to more than one party.

(b) An original and two copies of the written notice of each assignment of monies that may be due or come due from CCC together with one signed copy of the instrument of assignment, which shall be a true copy of the original, must be filed by the assignee with the Treasurer, CCC, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(c) Receipt of the notice of assignment shall be acknowledged by an official of CCC.

§ 1487.12 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the assurance agreement and that there is no agreement or understanding for any commission, percentage, brokerage, or contingent fee for soliciting or securing the assurance agreement, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM-101 assurance agreement, CCC shall have the right notwithstanding other rights provided under these regulations to annul coverage for any commodities not yet shipped and/or to proceed against the exporter.

[46 FR 9556, Jan. 29, 1981]

§ 1487.13 Officials not to benefit.

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the assurance agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the assurance agreement if made with a corporation for its general benefit.

§ 1487.14 Exporter's records and accounts.

Authorized officials of USDA shall have access to and the right to examine any pertinent books, documents, papers, and records of the exporter and/or the assignee involving transactions related to the export credit sale covered by the assurance agreement until 3 years after expiration of the coverage of the related assurance agreement.

§ 1487.15 Communications.

Unless otherwise provided, written requests, notifications, or communications concerning the assurance agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(Approved by the Office of Management and Budget under control number 0551-0010)

[43 FR 4033, Jan. 31, 1978, as amended at 47 FR 746, Jan. 7, 1982]

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM-5)

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AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM-5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this Subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM-5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Pub. L. 83-664 are not applicable to shipments under this program.

(d) The regulations contained in this Subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this Subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with § 1488.14, and (3) acceleration of payment thereunder in accordance with these regulations.

(b) "Agency or branch bank" means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager.

(d) "Bank obligation" means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or any agency or branch bank in accordance with § 1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever occurs first, if payment is not received from other sources.

(e) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) "Carrying charges" means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidental costs as may be approved by the Assistant Sales Manager.

(g) "Commercial risk" means risk of loss due to any cause other than specified as noncommercial risk in paragraph (u) of this section.

(h) "Date of delivery" means the onboard date of the ocean bill of lading, or the date of an airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the onboard carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Delivery" means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) "Eligible commodities" means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with § 1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) "Eligible cotton" means Upland and Extra Long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) "Financing period" means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) "Foreign bank" means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) "Foreign importer" or "importer" means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) "GSM-5" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) "Noncommercial risk" means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) "Port value" means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) "Sale" means a contract to sell on credit U.S. agricultural commodities to be financed under GSM-5.

(x) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(y) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) "USDA announcement" means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM-5.

(aa) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 30833, June 17, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

FINANCING EXPORT SALES

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(a) Permit U.S. exporters to meet competition from other countries.

(b) Prevent a decline in U.S. commercial export sales.

(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(d) Result in a new use of the agricultural commodity in the importing country.

(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM-5 financing agreement.

(11) Any additional information as determined by CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this Subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM-5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

DOCUMENTS REQUIRED FOR FINANCING

§ 1488.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) A copy of the document evidencing export provided for in § 1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with § 1488.7(c), § 1488.10, § 1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with § 1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with § 1488.12.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

§ 1488.9a Evidence of export for commodities delivered before export.

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

DOCUMENTS REQUIRED AFTER FINANCING

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must (1) identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement, (2) state the quantity and date of entry of the commodity into the destination country, and (3) be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which (1) identifies the commodity as that exported under the financing agreement, (2) states the quantity of the commodity entered under bond and date of entry into the destination country, and (3) certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however,* That the aggregate of all amounts assessed under this § 1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM-5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to § 1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under thei respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 [Reserved]

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

§ 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

PART 1489—TERMS AND CONDITIONS FOR PURCHASE OF TOBACCO UNDER COMMODITY CREDIT CORPORATION EXPORT CREDIT SALES PROGRAM

Sec.

1489.1 General statement.
1489.2 Associations through which tobacco may be purchased.
1489.3 Purchase of tobacco.
1489.4 Export requirements for tobacco purchased.
1489.5 Failure to perform.

APPENDIX—NOTICE TO EXPORTERS

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended; 15 U.S.C. 714b, 714c.

SOURCE: Announcement PR TB-2, 30 FR 12067, Sept. 22, 1965, unless otherwise noted.

§ 1489.1 General statement.

Price support on tobacco is made available to producers through loans made by Commodity Credit Corporation (hereinafter referred to as "CCC") to producer-owned and controlled associations (hereinafter referred to as "the associations"). Tobacco which the associations receive from producers and pledge to CCC as loan collateral is processed, stored and sold by the associations in accordance with usual trade practices. Sales proceeds are applied to repay the loan from CCC. Information on inventories, prices, and other terms and conditions of sale is issued and distributed by the associations, and will be furnished by the associations to any interested person upon request. This part sets forth the additional terms and conditions applicable to purchases of tobacco under the CCC Export Credit Sales Program (GSM-3, Rev. II) set out at 31 FR 2997 and any revisions thereof.

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

§ 1489.2 Associations through which tobacco may be purchased.

The kind of tobacco handled by each of the associations and the names and addresses of the associations through which tobacco may be purchased are as follows:

Kind	*Association*
Flue-Cured Tobacco	Flue-Cured Tobacco Cooperative Stabilization Corp., Post Office Box 2718, Raleigh, N.C.
Burley Tobacco	Burley Tobacco Growers Cooperative Association, Post Office Box 860, Lexington, Ky.; Virginia Burley Tobacco Growers Association, Inc., Post Office Box 549, Abingdon, Va.; Burley Stabilization Corp., 3919 Holston Drive NE., Knoxville, Tenn.

Kind	Association
Dark-Fired and Dark Air Cured Tobacco.	Eastern Dark-Fired Tobacco and Dark Growers Association, 1109-11 South Main St., Springfield, Tenn.; Stemming District Tobacco Association, 125 First St., Henderson, Ky.; Western Dark-Fired Tobacco Growers Association, 202-206 East Maple St., Murray, Ky.; Dark Tobacco Sales Cooperative, Post Office Box 301, Farmville, Va.
Cigar Filler and Binder Tobacco.	Cigar Tobacco Cooperative, Post Office Box 23, Arcanum, Ohio; Conn-Mass Tobacco Cooperative, Inc., Post Office Box 550, Holyoke, Mass.; Northern Wisconsin Cooperative Tobacco Pool, Inc., Viroqua, Wis.; Wisconsin Cooperative Tobacco Growers Association, 28 West Fulton St., Edgerton, Wis.
Maryland Tobacco	Maryland Tobacco Cooperative, Inc., Post Office Box 368, Upper Marlboro, Md.

§ 1489.3 Purchase of tobacco.

(a) Upon issuance of a credit approval to a purchaser of tobacco (hereinafter referred to as "the exporter"), CCC will notify the appropriate association of the credit approval number, name of approved exporter, amount of approval, and other pertinent information.

(b) The exporter should arrange with the appropriate association for the selection and acquisition of the tobacco to be purchased. Selection may be made from any stocks pledged to CCC which the association has available for sale. To the extent that export requirements for the tobacco purchased are to be met by exporting cigarettes, the tobacco purchased shall be flue-cured, burley and Maryland tobaccos, in the following proportions: 58 to 63 percent flue-cured, 36 to 40 percent burley, and 1 to 2 percent Maryland. If less than an entire hogshead of any of the types of tobacco is needed to attain such percentages, the exporter shall make direct payment to the association for the remaining part of each such hogshead, and that part shall not be deemed to be purchased under the credit arrangement.

(c) The association shall invoice the selected tobacco to the exporter at the association's price and in accordance with all other usual sale arrangements of the association. The exporter shall submit a copy of the invoice, accompanied by the bank obligation prescribed by the credit arrangement, to Fiscal Division, ASCS, U.S. Department of Agriculture, Washington, DC, 20250. Upon receipt of a copy of the invoice and an acceptable bank obligation, CCC will credit the amount of the association's sales price to the appropriate loan account of the association. CCC shall promptly notify the association of the credit to the loan account.

§ 1489.4 Export requirements for tobacco purchased.

(a) Within 90 calendar days from the date of the invoice or such extension of time as may be approved by CCC for good cause, the exporter shall cause exportation to the destination specified in the proportions stated in § 1489.3, purchased under the credit arrangement or the equivalent of such quantity as determined under paragraph (c) of this section, of the same kind of tobacco: *Provided,* That, if the tobacco purchased under the credit arrangement is flue-cured, burley and Maryland tobaccos in the proportions stated in § 1489.3, the exporter's obligation to export the tobacco purchased or an equivalent quantity of the same kind of tobacco may be met by exporting a quantity of cigarettes whose value at the rate of $2.25 per thousand for nonfilter brand cigarettes (including all-tobacco tipped standard brands) and $1.75 per thousand for filter and "economy" brands equals or exceeds the invoice value of the tobacco purchased under the credit arrangement.

(b) The exporter shall within 30 calendar days after exportation furnish to the Fiscal Controls Branch, Fiscal Division, ASCS, U.S. Department of Agriculture, Washington, DC, 20250, proof of exportation which shall consist of:

(1) In the case of exportation by water, a nonnegotiable copy, certified as true and correct by the exporter or other person who exported the tobacco or cigarettes, of an onboard ocean bill of lading showing the number of containers of tobacco or cigarettes, the gross (or net) weight of such contain-

ers, the date and place of loading on board vessel, name of vessel, the name of the person who exported the tobacco or cigarettes, and the consignee and destination.

(2) In the case of exportation by rail or truck, a copy of the bill of lading under which the tobacco or cigarettes were shipped, together with (i) an authenticated landing certificate issued by an official of the Government of the country to which the tobacco or cigarettes were exported, or (ii) a copy of Shipper's Export Declaration authenticated by the appropriate U.S. Customs official. The bill of lading and supporting export form (landing certificate or Shipper's Export Declaration) must apply to the same shipment of tobacco or cigarettes, and such forms, or properly authenticated attachments, must show the number of hogsheads of tobacco or containers of cigarettes, the gross (or net) weight of such hogsheads or containers, the date and place of entry into the country of destination, and the name and address of both the person who exported the tobacco or cigarettes and the person to whom they were shipped.

(3) Where exportation is effected by other than the exporter, certification on the bill of lading, signed by such other person and the exporter, that such exportation was caused by the exporter pursuant to this part.

(4) Where exportation or transshipment of tobacco has been made or caused to be made by the exporter to one or more of the countries or areas for which an export license is required by the Bureau of International Commerce, U.S. Department of Commerce, the license issued for such movement by such agency shall be identified in the bill of lading, by license number.

(5) A statement, certified by the exporter, showing information as to the kind or type, form, and quantity of the tobacco purchased under the credit arrangement, and of the tobacco or cigarettes exported, as follows: (i) The kind or type of tobacco exported, (ii) if the tobacco exported is stemmed tobacco, whether it was purchased in that form, (iii) if stemmed tobacco was purchased and substitute stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf tobacco, packed-weight basis, that is contained in the stemmed tobacco exported, with the quantities of unstemmed tobacco converted to a stemmed leaf equivalent by dividing the unstemmed quantities by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco, (iv) if unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf, packed-weight basis, that is contained in the stemmed leaf exported, (v) if cigarettes are exported, the brand name of the product, whether filter or non-filter tip and the computations made in determining the amount (value) to be applied against the invoice value of the tobacco purchased.

(6) Such other proof of exportation as may be required by CCC.

(c) The quantity of tobacco exported shall be considered equivalent to the quantity of tobacco purchased (and required to be exported), if the weights of the tobacco exported (as shown by the proof of exportation) correspond to the weights of the tobacco purchased in the following manner:

(1) If unstemmed leaf was purchased and unstemmed leaf exported, the gross or net weights of the tobacco exported must equal or exceed the gross or net weight of the tobacco purchased.

(2) If unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported must equal or exceed the quantity purchased.

(3) If stemmed tobacco was purchased and substitute stemmed tobacco exported the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported, divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco, must equal or exceed the net weight of the stemmed tobacco purchased.

(4) If stemmed tobacco was purchased and unstemmed leaf tobacco exported, the quantity exported divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco must equal or exceed the net weight of the stemmed tobacco purchased.

(d) The proof of exportation furnished under this part shall not have been used, and shall not subsequently be used, as evidence of exportation under any other CCC or Department of Agriculture export program except to the extent that such proof is in excess of that needed to satisfy the export requirements of this part: *Provided, however,* That this limitation on the use of the proof of exportation shall not apply to the program providing for payments on export of certain kinds of tobacco set out at 31 FR 6862, 7556, and 9208 and any amendments thereof or supplements thereto.

(e) By submitting documents evidencing exportation the exporter represents and warrants that the commodity covered by such documents was not exported to, and has not and will not be transshipped or caused to be transshipped by the exporter to, any country or area for which an export license is required under the regulations issued by the Bureau of International Commerce, U.S. Department of Commerce, unless a license for such exportation or transshipment thereto has been obtained from such Bureau.[1]

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

§ 1489.5 Failure to perform.

The exporter agrees to export tobacco or cigarettes as required by this part within the time specified herein, or to pay liquidated damages as herein provided. Failure to furnish proof of exportation within 30 calendar days after 90 calendar days after the date of the invoice or any extended period approved by CCC shall be prima facie evidence of failure to export. Failure of the exporter to export tobacco or cigarettes within the time required under this part will result in damage to CCC's export and price support programs. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC liquidated damages as follows: (a) Where the export requirements for tobacco are not met, for each day of delay in exportation, one-sixth of one percent of a base amount determined by multiplying the number of pounds by which the export requirements for tobacco are not met by the average invoice price per pound of the tobacco acquired from the association, or (b) where the export requirements for cigarettes are not met, for each day of delay in exportation, one-sixth of one percent of a base amount equal to the amount by which the value of the cigarettes exported, as determined under § 1489.4, fails to equal the invoice value of the tobacco bought under the credit arrangement: *Provided,* That in the case of either paragraph (a) or (b) of this section the total amount of liquidated damages assessed shall not exceed ten percent of the base amount: *And provided, further,* That no liquidated damages shall be assessed if CCC determines that failure to export or delay in exportation was due solely to causes without the fault or negligence of the exporter. In acquiring tobacco under a credit arrangement, the exporter agrees that these rates are a reasonable estimate of probable actual damages that would be incurred by CCC by reason of failure to export in accordance with this part.

APPENDIX—NOTICE TO EXPORTERS

The Department of Commerce, Bureau of International Commerce, pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or re-exportation by anyone of any commodities under this program to Cuba, the Soviet Bloc or Communist-controlled areas of the Far East, including Communist China, North Korea, and the Communist-controlled area of Vietnam, except under validated license issued by the U.S. Department of Commerce, Bureau of International Commerce.

For all exportations, one of the destination control statements specified in Commerce Department Regulations (Comprehensive Export Schedule § 379.10(c)) is required to be placed on all copies of the shipper's export declaration, all copies of the bill of lading, and all copies of the commercial invoices. For additional information as to which destination control statement to use, the exporter should communicate with the Bureau of International Commerce or one of the field offices of the Department of Commerce.

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[1] Information to exporters: The Department of Commerce Regulations prohibit exportation or reexportation by anyone, including a foreign exporter, of the commodity exported pursuant to the terms of these regulations, to prohibited countries and areas. The attention of the exporter is invited to the "Notice to Exporters" which accompanies these regulations.

Exporters should consult the applicable Commerce Department regulations for more detailed information, if desired, and for any changes that may be made therein.

PART 1491—CCC INTERMEDIATE CREDIT EXPORT SALES PROGRAM FOR BREEDING ANIMALS

Subpart A—Financing of Export Sales of Breeding Animals (GSM-201)

GENERAL

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1491.2 Definition of terms.

FINANCING EXPORT SALES

1491.3 General.
1491.4 Submission of requests for sale registrations.
1491.5 Acceptance of sale registrations.
1491.6 Amendments to financing agreements.
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1491.8 Documents required after delivery.
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ENTRY INTO COUNTRY OF DESTINATION

1491.10 Failure to enter.
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1491.12 Coverage of bank obligations.
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1491.20 Exporters records and accounts.
1491.21 Communications.
1491.22 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 4(b), 80 Stat. 1537, as added by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(b)); sec. 5(f), 62 Stat. 1070, as amended (15 U.S.C. 714c).

Subpart A—Financing of Export Sales of Breeding Animals (GSM-201)

SOURCE: 44 FR 49419, Aug. 23, 1979, unless otherwise noted.

GENERAL

§ 1491.1 General statement.

(a) This subpart contains the regulations governing the Commodity Credit Corporation's Intermediate Credit Program for financing the export sales of breeding animals (GSM-201).

(b) The financing period shall be in excess of three years but not more than ten years.

(c) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash the exporter's account receivable arising from the export sale, after delivery of the breeding animals.

(d) GSM-201 will be administered by the Office of the General Sales Manager, U.S. Department of Agriculture.

(e) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to shipments of breeding animals financed under GSM-201.

(f) CCC may require an initial payment from the foreign importer prior to delivery of the breeding animals.

(g) Payment to CCC shall be in dollars with interest equal, as nearly as practicable, to the rate charged by CCC for Financing under CCC's short term Export Credit Sales Program.

§ 1491.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the export value of the breeding animals delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in

U.S. dollars in the United States, (2) interest in accordance with § 1491.14 and (3) acceleration of payment thereunder in accordance with these regulations.

(b) "Agency or branch bank" means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S.D.A., or his designee.

(d) "Bank obligation" means an obligation, in accordance with § 1491.12, and acceptable to CCC, of a U.S. bank, a branch bank, or a foreign bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1491.14.

(e) "Breeding animals" means U.S. breeding animals, including, but not limited to, cattle, swine, sheep, and poultry.

(f) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(g) "Date of delivery" means the onboard date of an ocean bill of lading, or the date of an airway bill, or if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(h) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(i) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(j) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling breeding animals and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting or participating in any program financed by CCC on the date of issuance of the financing agreement.

(k) "Export value" means the net amount of the exporter's sale price to be financed under the financing under the financing agreement basis f.o.b. export carrier U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air, less any payments made to the exporter, and less any discounts, credits or allowances by the exporter. Export value may include freight cost. The export value shall not include marine and war risk insurance for c.i.f. sales.

(l) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, and the terms and conditions of the regulations in this subpart in effect on the date of approval.

(m) "Financing period" means the number of years and months over which paymnent is to be made which shall be in excess of three years but not more than ten years. Such period shall start on the date of delivery or the weighted average delivery date of the breeding animals to be exported under the financing agreement and shall expire on the expiration of the bank obligation or the specified period over which payment is to be made, whichever occurs first.

(n) "Foreign bank" means a bank which is not a U.S. bank or agency or branch bank, but includes a foreign branch of a U.S. bank.

(o) "Foreign importer" or "importer" means the buyer who purchases the breeding animals to be exported under a financing agreement.

(p) "Freight cost" means the cost of freight from United States points of export to designated points of entry in the country shown in the financing agreement.

(q) "GSM-201" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Intermediate Credit Export Sales Program For Breeding Animals.

(r) "OGSM" means the Offfice of the General Sales Manager, U.S. Department of Agriculture.

(s) "Point of export" means the U.S. port, U.S. airport, or U.S. border point where the breeding animals are inspected by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture and exported from the United States.

(t) "Port value" means the net amount of the exporter's sale price of the breeding animals, basis f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports, if shipped by air.

(u) "Producer" means the person holding legal title to the breeding animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

(v) "Sale" means a contract to sell on credit breeding animals to be financed under GSM-201.

(w) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(x) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(y) "USDA announcement" means an announcement published by the U.S. Department of Agriculture (USDA).

(z) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

FINANCING EXPORT SALES

§ 1491.3 General.

(a) No export sale may be financed under this subpart unless the Assistant Sales Manager determines that the sale will: develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal U.S. commercial sales or improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

(b) Financing under this subpart may not be used to encourage credit competition or for the purpose of foreign aid or debt rescheduling.

§ 1491.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1491.21.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the export value of the sale.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-201.

(e) The following information shall be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality of the breeding animals as required by the applicable supplements to these regulations, and the number of breeding animals to be exported.

(2) The country of destination.

(3) The port value of the breeding animals to be exported.

(4) The freight cost if sale is made c&f or c.i.f. basis.

(5) The export value.

(6) The date of sale and exporter's sale number.

(7) The date of delivery or period for delivery.

(8) The financing period.

(9) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address.

(10) The name and address of the foreign importer.

(11) Any additional information required by the applicable supplements to these regulations and as determined by CCC.

§ 1491.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager shall determine whether the request for registration of the sale shall be approved.

If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) CCC reserves the right to reject any and all requests for sale registration.

(c) The approved registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for the sale registration, the approved sale registration, and the applicable terms and conditions of this subpart, including amendments and supplemental announcements and supplements hereunder, which are in effect on the date of approval of the sale registration.

(d) The financing agreement may contain such terms and conditions not inconsistent with this subpart, as are deemed necessary in the interest of CCC and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(e) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

§ 1491.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-201 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery and change in the interest rate.

§ 1491.7 Expiration of period(s) for delivery.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by the Assistant Sales Manager by the period of such delay.

DOCUMENTS REQUIRED FOR FINANCING

§ 1491.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations are received by CCC at the office specified in § 1491.21 (b) within forty-five days, or any extension thereof granted by the Treasurer or Assistant Treasurer, CCC, after date of delivery of the breeding animals.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing with respect to breeding animals delivered (i) the financing agreement number, (ii) the port value to be financed, and (iii) the freight cost if sale is made c&f or c.i.f. basis.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification that (i) he has entered into a contract to sell breeding animals; (ii) the date of sale, the agreed upon price, the class, grade, quality, quantity of the breeding animals, and the payment terms and interest are in accordance with the financing agreement; (iii) he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) breeding animals of the class, grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer showing (1) the port value of the breeding animals and (2) freight cost if sale is made c&f or c.i.f. basis.

(d) A copy of the document evidencing export provided for in § 1491.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer.

(e) A bank obligation or bank obligations in accordance with § 1491.12 and paragraph (h) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number, and providing for the payment of interest in accordance with § 1491.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1491.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof granted by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if advised in accordance with § 1491.12.

(Approved by the Office of Management and Budget under control number 0551-0012)

[44 FR 49419, Aug. 23, 1979, as amended at 47 FR 746, Jan. 7, 1982]

§ 1491.9 Evidence of export.

(a) If the breeding animals are exported by rail or truck, the exporter shall furnish to CCC one copy of the bill of lading covering the breeding animals exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the breeding animals are exported, showing the quantity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the breeding animals are exported by ocean carrier, the exporter shall furnish to CCC one non-negotiable copy or photo copy or other duplicate copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading of the breeding animals, the name of the vessel, the destination of the breeding animals and the name and address of both the exporter and the importer.

(c) If the breeding animals are exported by aircraft, the exporter shall furnish to CCC one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the quantity, date and place of loading of the breeding animals, the name of the airline, the destination of the breeding animals and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

ENTRY INTO COUNTRY OF DESTINATION

§ 1491.10 Failure to enter.

If the exporter fails to enter or cause the entry of the breeding animals into the country of destination, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall, at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1491.11. The remedy herein provided shall not be exclusive of other rights available to the Federal Government.

§ 1491.11 Liquidated damages.

Failure of the exporter to enter or cause the entry of breeding animals financed under GSM-201 into the country of destination shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages for failure to enter or cause the entry of the breeding animals into the country of destination, 5 percent of the amount financed for the breeding animals not entered into the country of the destination. Liquidated damages shall not be assessed if the Assistant Sales Manager determines that failure to enter or cause the entry of the breeding animals into the country of destination was due to loss or injury of the breeding animals without fault or negligence on the part of the exporter, or due to act of God or government or public enemy.

BANK OBLIGATIONS AND PAYMENT

§ 1491.12 Coverage of bank obligations.

(a) The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank, a branch bank, or a foreign bank. CCC will not accept any bank obligation issued by an agency bank. If the bank obligation is issued by a foreign bank, the bank obligation must be advised by a U.S. bank, a branch bank, or an agency bank.

(b) The bank obligation shall provide for payment under the terms and conditions of the financing agreement.

(c) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(d) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources of amounts otherwise payable under such bank obligation.

(e) Collection of purchased accounts receivable will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

§ 1491.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If the draft is dishonored, the U.S. bank, branch bank, or agency bank shall return the dishonored draft together with its statement of the reason for nonpayment.

§ 1491.14 Interest charges.

The account receivable purchased by CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be set forth in a USDA announcement. The interest rate applicable for an account receivable covered by a bank obligation issued by a U.S. bank or branch bank shall be lower than the interest rate for an account receivable covered by a foreign bank obligation. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1491.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the breeding animals delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

§ 1491.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1491.16 Liability for payment.

If the exporter has fulfilled all his obligations under the sales contract within the coverage of the bank obligation(s) submitted in accordance with § 1491.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter for payment of all amounts due at maturity of the account receivable and of the bank obligation(s) but the exporter shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by it pursuant to the financing agreement, any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1491.15 and § 1491.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1491.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1491.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1491.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commerical or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to cancel the financing agreement without liability to CCC. Should the financing agreement be cancelled, CCC will promptly consent to the reduction or cancellation of related bank obligations except for amounts outstanding under such financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1491.19 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1491.20 Exporter's records and accounts

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1491.21 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) Forward documents for financing to:

United States Department of Agriculture,
Commodity Credit Corporation, P.O. Box
2415, Washington, DC 20013.

§ 1491.22 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1491) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0012.

[Amdt. 1, 50 FR 13968, Apr. 9, 1985]

PART 1492—CCC INTERMEDIATE CREDIT EXPORT SALES PROGRAM FOR FOREIGN MARKET DEVELOPMENT FACILITIES

Subpart A—Financing Export Sales of Agricultural Commodities Under CCC Intermediate Credit Export Sales Program (GSM-301)

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AUTHORITY: Sec. 4(b), 80 Stat. 1537, as added by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a); sec. 5(F), 62 Stat. 1070, as amended.

Subpart A—Financing Export Sales of Agricultural Commodities Under CCC Intermediate Credit Export Sales Program (GSM-301)

SOURCE: 45 FR 64885, Oct. 1, 1980, unless otherwise noted.

GENERAL

§ 1492.1 General statement.

(a) Section 4(b) of the Food for Peace Act of 1966, as added by the Agricultural Trade Act of 1978, authorizes the Commodity Credit Corporation (CCC) to finance export sales of United States agricultural commodities out of CCC and private stocks on credit terms in excess of three years but not more than ten years.

(b) Intermediate credit financing made available by CCC on the export sale of United States agricultural commodities may be used to establish facilities in the importing country to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities through the use of local currency generated from the import and sale of the U.S. agricultural commodities to finance the development of such facilities.

(c) No export sale may be financed unless the General Sales Manager determines that the sale will: (1) Develop or expand the importing nation as a foreign market, on a long term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal U.S. commercial sales; or (2) otherwise improve the capability of the importing country to purchase and use on a long term basis, U.S. agricultural commodities.

(d) Intermediate credit financing may not be used for projects for which financing is available under other U.S. programs, such as programs administered by the Overseas Private Investment Corporation and the Export-Import Bank. However, financing provided by such institutions may be supplemented to the extent the General Sales Manager determines that such supplementation is necessary to accomplish the objectives of this program.

(e) Intermediate credit financing may not be used to encourage credit competition or for the purpose of foreign aid or debt rescheduling.

(f) The terms of credit for export sales financed shall include the following conditions:

(1) Repayment of financing shall be made in U.S. dollars and shall bear interest for the period of the financing. The interest rate shall be specified in the project agreement and shall apply to export sales made during a designated period of time. Interest rates will be determined by CCC using generally the same criteria as used in determining interest rates charged under CCC's short-term Export Credit Sales Program.

(2) The participant shall be required to make an initial payment of at least 15 percent of the export value of the agricultural commodity at the time of export of the commodity unless the General Sales Manager determines that a lower initial payment is appropriate.

(3) When deemed appropriate to protect the interests of CCC, the participant shall also be required to make a further investment in the project. Such investment may include providing initial working capital or the payment of feasibility and engineering studies, organizational expenses, land cost, construction cost, machinery and equipment cost, etc., with the participant's own resources.

(g) CCC shall, when deemed appropriate, obtain commitments from participants that the products produced in facilities covered by the project agreement will not be exported from the importing country if such products compete with the same or similar product being exported from the United States.

(h) Subject to the terms and conditions as set forth in GSM-301, CCC will purchase, after export of the commodity, the exporter's account receivable arising from an export sale of U.S. agricultural commodities.

(i) The provisions of Pub. L. 83-664 (Cargo Preference Act) shall not apply to exports of U.S. agricultural commodities financed under GSM-301.

(j) Participation under GSM-301 will not be conditioned upon the participant's use of U.S. goods and services to establish the facilities except that only U.S. agricultural commodities will be financed under the program.

(k) The GSM-301 program will be administered by the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture.

§ 1492.2 Definition of terms.

As used in this GSM-301, the project agreement, USDA announcements, and the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the participant to the exporter for the export value of the U.S. agricultural commodity exported by the exporter to the participant. The account receivable establishing the contractual obligation between the exporter and the participant shall be evidenced by documents in form and substance satisfactory to CCC.

(b) "General Sales Manager" means the General Sales Manager, Foreign Agricultural Service, USDA, or the General Sales Manager's designee.

(c) "Assurer" means the institution which assures, on behalf of the participant, repayment in U.S. dollars of the amount financed by CCC with interest in accordance with provisions of the project agreement between CCC and the participant. An "assurer" may be a U.S. bank or financial institution; a foreign private bank or financial institution; or a central bank, government agency; or a foreign government.

(d) "Carrying charges" means storage, insurance, and interest charges involved in the cost of handling and storing the agricultural commodity before export and such other incidental costs as may be approved by the General Sales Manager.

(e) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) "Commodity agreement" means the written agreement entered into between CCC and an exporter under which the exporter agrees to export an eligible U.S. agricultural commodity in accordance with the exporter's export sales contract with the participant and the provisions of GSM-301 in consideration of CCC's agreement to purchase the exporter's account receivable after export of the commodity and upon submission of the required documents specified in § 1492.29.

(g) "Commodity purchase authorization" means a USDA announcement published by the U.S. Department of Agriculture pursuant to GSM-301 in which the General Sales Manager authorizes the participant to purchase commodities from exporters in accordance with the commodity purchase authorization and project agreement.

(h) "Date of export" means the onboard date of an ocean bill of lading, or the date of an airway bill, or if export is by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the participant under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Eligible commodity" means any agricultural commodity or product thereof, including eligible cotton, produced in the United States and designated by the General Sales Manager as eligible for financing under GSM-301. Commodities which have been purchased from CCC are also eligible for export under GSM-301. Exports of commodities financed through a direct loan by the Export-Import Bank of the United States or pursuant to any CCC barter contract, Pub. L. 480 agreement, Agency for International Development agreement, or any other concessional-type transactions are not eligible for financing under GSM-301.

(k) "Eligible cotton" means upland and extra-long staple cotton grown in the United States that is eligible for financing hereunder but excludes reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton. CCC's determination as to the eligibility of cotton shall be final.

(l) "Eligible exporter" or "exporter" means a person who is (1) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) financially responsible, and (3) not suspended or debarred from contracting or participating in any program administered by CCC on the date of issuance of the commodity agreement.

(m) "Eligible importing country" means the country (1) which is named in the project agreement between CCC and the participant and in the commodity agreement between CCC and the exporter, and (2) which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Export" means the export of the U.S. agricultural commodity as required by the export sale contract between the participant and exporter to transfer to the participant full or conditional title to the commodity. Export from the United States shall be f.a.s. or f.o.b. export carrier at U.S. ports, airports, and border points of exit or, if transshipped through Canada, at ports on the Great Lakes and the St. Lawrence River.

(o) "Export value" means the net amount of the exporter's sale price for the commodity delivered to the participant under a commodity agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, airports or border points of exit, or, if transshipped through Canada, at ports on the Great Lakes or on the St. Lawrence River. The export value shall not include ocean freight for a c & f sale, or ocean freight and marine and war risk insurance for a c.i.f. sale, but may include carrying charges as provided for in the export sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodity, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(p) "Financing period" means the number of years and months over which payment is to be made which shall be in excess of three years but not more than ten years. Such period shall start on the date of export of the commodity and shall expire on the expiration of the financial assurance established by the participant or the specified period over which repayments are to be made, whichever occurs first.

(q) "GSM-301" means the regulations contained in this Subpart A and USDA announcements thereto, setting forth the terms and conditions governing the CCC Intermediate Credit Export Sales Program for Foreign Market Development Facilities.

(r) "Project agreement" means the written agreement entered into between CCC and a participant for the financing of U.S. agricultural commodities on credit pursuant to the purpose described in § 1492.1(b).

(s) "Participant" means a foreign government, a U.S. or foreign individual, group of individuals, partnership, corporation, association, cooperative or other entity which (1) enters into a project agreement with CCC, (2) purchases U.S. agricultural commodities from an exporter to be exported from the U.S. to the importing country named in the commodity agreement, and (3) executes the documents evidencing the account receivable which is assigned to CCC.

(t) "Supply year" or "fiscal year" means the twelve-month period beginning October 1 and ending the following September 30.

(u) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

PROJECT AGREEMENTS

§ 1492.3 General.

To qualifying for a project agreement, an applicant must submit: (a) An application for a project agreement; (b) a project plan and cost information; (c) a feasibility study and engineering report except when the General Sales Manager determines that such a study or report is not necessary; (d) certain legal documents; and (e) an assurance of payment. After a project agreement is signed by the General Sales Manager and the participant, the General Sales Manager will issue an authorization for the participant to purchase U.S. agricultural commodities. The commodities are then purchased and imported into the eligible country and sold by the participant, or the commodity may be processed into products and the products sold, and the proceeds from the sale of the commodity or product deposited in a financial institution. The funds are then available to the participant to carry out the construction of the market development project approved in the agreement. The participant will be required to make reports on the use of project funds and progress toward completion of the project. Activities under a project agreement will be reviewed by CCC to determine compliance with the project agreement.

§ 1492.4 Eligible projects and participants.

(a) Local currency generated from the import and sale of the commodity, or product thereof, shall be used by the participant for the establishment of facilities in the importing country to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities which will improve market opportunities for the export sale of U.S. agricultural commodities.

(b) Projects which may be approved include, but are not limited to, feed and flour mills; bulk unloading, handling and storage facilities at ports and inland points; oilseed crushing and vegetable oil refining facilities; livestock receiving facilities; livestock feeding lots; processing plants; model bakeries; poultry facilities; and tallow refining facilities.

(c) The General Sales Manager may enter into project agreements with foreign governments, U.S. or foreign individuals, group of individuals, partnerships, corporations, associations, cooperatives, or other entities.

(d) If the project agreement is entered into with a foreign government, the foreign government may carry out the establishment of facilities directly or the foreign government may, if approved in the project agreement, enter into an agreement with a private business entity under which the private business entity would carry out the establishment of the facility. The private business entity and the plan of the private business entity to carry out the establishment of the facility must be approved by the General Sales Manager.

(e) If a non-government entity is to be the participant, it must furnish the General Sales Manager with a written statement from the foreign government of the country in which the project is to be carried out showing the foreign government's approval of the proposed project.

(f) The General Sales Manager will request the Agricultural Counselor or Attache assigned to the country in which the project is to be carried out and other interested U.S. agencies to furnish their recommendations concerning the proposed project.

§ 1492.5 Submission of application for a project agreement.

(a) An applicant for a project agreement shall submit a written application to the General Sales Manager. The application shall include, but is not limited to, the following:

(1) Name of the applicant and address, type of organization (company, corporation, cooperative, government or other entity), nature of its business and operations and, if a corporation, a copy of its articles of incorporation and by-laws.

(2) Name and address of any firm or individual with which the applicant has a business affiliation, i.e., ownership interest.

(3) A summary of the applicant's experience in dealing with agricultural commodities.

(4) If the applicant is a private organization and the Government of the importing country is to participate in the project, the nature and extent of Government participation in the ownership, financing, or operation of the project. If the Government of the importing country will not be participating in the project, the extent to which the applicant has discussed the proposal with officials of the Government.

(5) Information on each of the applicant's principal officers and managerial personnel as follows:

(i) Full name, (ii) position, (iii) place and date of birth (day, month, and year), (iv) present citizenship, (v) business and private addresses, and (vi) summary of business experience.

(6) The name of the importing country.

(7) The kind and quantity of agricultural commodity proposed for financing.

(8) The period of time during which the commodity would be exported.

(9) A statement of the applicant's plans for selling the commodity to end users within the importing country or, if the applicant is the intended processor or user, the applicant's plans for processing or using the commodity.

(10) The repayment period considered necessary by the applicant to carry out the project.

(11) Name and address of the financial institution which shall provide the required assurance of U.S. dollar payment to CCC as provided in § 1492.10.

(12) The most recent statement of financial position and profit and loss statement of the applicant.

(13) Projected cash-flow statements covering the repayment period.

(14) The extent to which the applicant has discussed the proposal with the U.S. Agricultural Counselor or Attaché or with representatives of the American Embassy and other U.S. agencies.

(15) Brief statement explaining any requests made by the applicant to other U.S. lending organizations, such as the Overseas Private Investment Corporation or the Export-Import Bank of the U.S., to obtain financing for the proposed project and the results of such requests.

(16) Project plans and information as provided in § 1492.6.

(17) Other information or documents as may be requested by the General Sales Manager.

(b) An application may be approved as submitted, approved with modification, or rejected by the General Sales Manager.

§ 1492.6 Project plan and information.

(a) The applicant shall furnish the following information to the General Sales Manager:

(1) *Project plans.* A complete description of the project; plan for carrying out the project; time schedule for carrying out the project, including the approximate starting and completion dates; purpose and need of the project in the importing country; expected effect the project will have on future imports of agricultural commodities into the importing country; and any other information which would demonstrate the soundness of the project plan.

(2) *Project cost estimates.* An estimate of the total cost to carry out the project with a breakdown of the total costs among major categories involved in the project, such as technical services (architectural and engineering), land, construction services, materials, machinery and equipment, financing costs, administrative and overhead costs. An allocation of each such category of costs to project funds and to resources to be provided by the participant. Unless otherwise agreed to in writing by the General Sales Manager, financing costs (other than interest to be paid by the participant for the financing provided by CCC under the project agreement) and related guarantee fees and administrative and overhead charges incurred by the participant cannot be allocated to project funds.

(3) *Project fund estimate.* An estimate of the project funds needed to carry out the project and a certification by the participant which provides substantially as follows: "I certify that the project cost estimates allocated to be paid with project funds represents a reasonable estimate of the financing needed to carry out the project."

(4) *Participant resources.* An estimate of the value of resources (working capital, land, buildings, machinery and equipment, etc.) to be provided by the participant. Show the amount of any encumbrance which may apply to the resource. A resource may include that portion of the estimated export value of the commodity to be exported from the U.S. which the applicant will pay with the applicant's own resources. If the applicant is required by the General Sales Manager to make a further investment in the project, a detailed description of the nature and the value of the resource which will represent such investment. When requested by the General Sales Manager, the applicant must furnish a detailed independent appraisal of the value of the resources.

(5) *Tentative schedule of disbursements.* A tentative time schedule for project fund disbursements which shows the estimated disbursement for each major cost category for each semi-annual period of the financing period.

(b) The applicant must furnish a feasibility study to demonstrate the soundness of the proposed project except when the General Sales Manager determines that such a study is not necessary.

(c) (1) The applicant shall employ the services of a competent engineering firm for the planning and development of the project and for supervision of the execution of the project except when the General Sales Manager determines that such services are not necessary.

(2) If the services of an engineering firm are required, the applicant's ar-

rangement with the engineering firm shall provide that the engineering firm furnish a certification with respect to the project plans and cost estimates as follows: "We hereby certify that we have reviewed the accompanying information on the project plans which we understand (name of applicant) is required to submit to the Commodity Credit Corporation. We further certify that this information is in accordance with the project plans and the specifications prepared by us, or with our advice and consultation, and that the cost estimates are reasonable and proper." The certification shall show the name and address of the engineering firm and shall be signed by an authorized representative of the firm.

(d) The General Sales Manager shall have the right to request the applicant to furnish copies of the detailed architectural and engineering plans and specifications and detailed cost estimates.

(e) The applicant shall furnish such other information, certifications, or documents as requested by the General Sales Manager.

(f) After the project plans have been approved by the General Sales Manager, the project and the plan for carrying out the project may be modified only by mutual agreement of the General Sales Manager and the participant in writing.

§ 1492.7 Legal opinions and documents.

Unless otherwise agreed to by the General Sales Manager in writing, the applicant shall furnish to the General Sales Manager in form and substance satisfactory to the General Sales Manager, the following:

(a) An opinion prepared by the applicant's counsel showing that under the laws of the importing country:

(1) The applicant has the power and authority to enter into the project agreement and perform its obligations under the project agreement;

(2) The project agreement, as signed by the participant, or on behalf of the participant, is valid and legally binding upon the participant;

(3) Repayments of principal and interest due CCC are authorized to be made in U.S. dollars under the foreign exchange authorization issued by an official of the foreign government or under provision of law.

(4) The project agreement may be enforced by legal proceedings against the participant upon failure of the participant to meet its obligations under the project agreement;

(5) Judgments rendered in favor of CCC may be collected in U.S. dollars.

(6) Such other legal opinions including, but not limited to, an opinion with respect to the validity of the assurance of payment, certifications and documents furnished to CCC.

The opinions shall refer to all pertinent documents, decrees, laws, regulations, and legal precedents which serve as a basis for the conclusions stated therein, and shall set forth the procedures which CCC would have to follow in any legal proceedings against the participant and in collecting judgments awarded to CCC pursuant to such proceedings.

(b) A designation by name and title of the person or persons authorized to represent the participant in accordance with § 1492.35 and the authenticated specimen signature of each person.

(c) A foreign exchange authorization showing the signature, title, and organization of the issuing official of the foreign government which authorizes U.S. dollar funds for the repayment of principal and interest in accordance with the project agreement and a certificate of authentication of the authorization executed by an officer of the American Embassy in the importing country.

(d) An assurance of payment acceptable to CCC covering the principal and interest.

(e) Evidence satisfactory to the General Sales Manager that the participant has made arrangements for the services of an engineering firm acceptable to the General Sales Manager, except when the General Sales Manager determines that the services of an engineering firm are not necessary.

(f) The name and address of the financial institution in which project funds are to be deposited.

§ 1492.8 Subsequent legal opinions and documents.

Subsequent to the issuance of the first purchase authorization but prior to the issuance of each additional purchase authorization or any amendment which increases the maximum amount of a purchase authorization, the participant shall, when requested by the General Sales Manager, furnish:

(a) Additional assurance of payment if, as determined by the General Sales Manager, existing assurances are not sufficient.

(b) Additional foreign exchange authorization and related documents specified in § 1492.7(c), if, as determined by the General Sales Manager, existing authorizations and related documents are not sufficient.

(c) Such other additional legal opinions and documents as may be requested by the General Sales Manager.

§ 1492.9 Investment by the participant.

(a) The participant is required to make an initial payment at the time of export of the commodity of at least 15 percent of the export value of the commodity unless the General Sales Manager determines that a lower initial payment is appropriate. The percentage amount and manner of making such payment will be specified in the project agreement and in the commodity purchase authorization issued by the General Sales Manager pursuant to § 1492.13.

(b) When deemed appropriate by the General Sales Manager to protect the interests of CCC, the participant shall also be required to further invest in the project. Such investment may include initial working capital, administrative and overhead costs, the cost of feasibility and engineering studies, organizational expenses, land, construction costs, machinery and equipment, etc. The participant must furnish the amount of any encumberance which applies to the resource. When requested by the General Sales Manager, the participant must furnish a detailed independent appraisal of the value of the investment to be made by the participant.

§ 1492.10 Assurance of payment to CCC.

(a) Repayment of amounts due CCC for commodities financed under a project agreement must be secured by an assurance of payment issued by an assurer acceptable to CCC. The assurance of payment must provide adequate protection to CCC from failure of the participant to make scheduled repayments, from failure of the participant to complete the planned project, or failure to perform other obligations under the project agreement. An application for a project agreement will not be approved if the proposed assurer is not acceptable to the General Sales Manager because of its ability to provide reasonable and adequate assurance of full repayment to CCC.

(b) The assurance of payment shall be in the form of a letter of credit or other assurance of payment acceptable to the General Sales Manager.

(c) The assurance of payment shall obligate the assurer to pay CCC on demand in U.S. dollars the amount of the outstanding balance of the principal plus interest in the event of noncompliance with the project agreement.

(d) An acceptable assurance of payment covering the estimated export value of the commodity to be purchased and financed by CCC must be received by the General Sales Manager prior to the issuance of a commodity purchase authorization.

§ 1492.11 Credit terms and other financing provisions.

(a) The financing of commodities to the participant shall be through the purchase by CCC of an exporter's account receivable arising from an export sale after the commodity has been exported.

(b) Repayment shall be made to CCC by the participant in approximately equal semi-annual amounts with the first repayment being due on the date specified in the project agreement with subsequent repayments to be made semi-annually thereafter. Any semi-annual repayment, or repayment of the total amount of principal outstanding, may be made at any time prior to the due date thereof.

(c) The financing period approved for a particular project agreement will be based on factors such as the type of project, planning and completion time of the project and the project's ability to generate funds to liquidate the financing extended. The financing period determined appropriate shall be stated in the project agreement. CCC will consider granting a suitable grace period for the beginning date for repayment of principal based upon construction time and the ability of the project to generate sufficient cash flows to meet principal and interest payments and to provide returns for the equity investment by the participant.

(d) At the end of each calendar year, CCC will furnish to the participant a repayment schedule of the principal applicable to commodities exported in the prior twelve month period. The principal shall consist of the U.S. dollar amount disbursed for the account of the participant by CCC for the commodities exported in each calendar year less any adjustments. The principal with interest thereon shall be repaid to CCC semi-annually in accordance with the terms of the project agreement.

(e) The project agreement shall stipulate the interest rate to be paid to CCC. The interest rate shall be fixed at the time the project agreement is signed by the General Sales Manager and the participant and shall apply to export sales made during a designated period of time. After the expiration of such period, CCC shall determine the interest rate which will apply to subsequent export sales. The project agreement will be amended to reflect such rate and the period of time the rate will be in effect for export sales.

(f) Interest on the unpaid balance of the principal shall begin on the date of export of the commodity. Accrued interest shall be paid in U.S. dollars on the date which payment of principal is scheduled to be paid. Interest shall accrue on any installments determined by CCC to be in arrears.

(g) Repayments made by the participant shall be applied first to accrued interest due and then to principal. Principal and interest shall be paid without deduction for any taxation, including fees and impositions, now or at any time hereafter imposed under the laws of the importing country or any other country.

(h) All obligations of the participant to make repayments to CCC under the project agreement shall be stated in U.S. dollars and shall be discharged by payments in U.S. dollars.

(i) CCC shall have the right to sell or otherwise dispose of the amounts due CCC from the participant. CCC will give notice to the participant prior to any such sale or other disposition.

(j) The participant shall have the right to make prepayments of accrued interest and scheduled principle installments, in part or in full, without penalty.

(k) Information as to financing terms and interest rates may be obtained from the General Sales Manager.

§ 1492.12 Eligible importing countries.

Commodities financed under GSM-301 must be imported into the country in which the local currency generated from the sale of such commodities is to be utilized for the establishment of market development facilities.

§ 1492.13 Commodity purchase authorizations.

(a) After a project agreement is signed, the participant may request the General Sales Manager to issue commodity purchase authorizations for the commodity to be purchased under the terms of the project agreement.

(b) Commodity purchase authorizations will specify: The purchase authorization number; the kind of commodity to be purchased; the contracting period; the period during which the commodity must be exported; the approximate quantity and maximum U.S. dollar value of the commodity to be purchased; the importing country; the name of the participant or its agent, to whom bids must be submitted by the exporter; the percentage amount of the U.S. dollar value of the commodity exported which will be financed by CCC; the percentage amount of the U.S. dollar value of the commodity exported which will be paid for by the participant with the participant's own resources; and other information deemed necessary by the General Sales Manager.

§ 1492.14 Export periods.

The commodity to be financed shall be exported during the export period specified in the project agreement and purchase authorization unless the General Sales Manager agrees in writing to an extension of such export period. If a project agreement provides for the purchase of commodities during more than one supply year, the issuance of purchase authorizations for each supply year shall be subject to the General Sales Manager's determinations as to: availability of funds; availability of the kind of commodity specified in the project agreement; and evidence that satisfactory progress has been made by the participant in carrying out the project.

§ 1492.15 Export value of the commodity to be financed.

CCC will finance only that portion of the export value of the commodity exported by the exporter to the participant pursuant to the provisions of the export sale and the purchase authorization for which the exporter has complied with the applicable provisions of GSM-301.

§ 1492.16 Determination of project funds.

Project funds shall consist of the local currency proceeds received by the participant from the sale of the imported commodity or the sale of products produced from the imported commodity which shall, unless otherwise agreed in writing by the General Sales Manager and the participant, be determined as follows:

(a) *Imported commodities sold without processing.* When the commodity imported by the participant is sold without processing, the amount of the project funds shall be the total sale proceeds which the participant receives from such sales; *Provided,* That, in determining the amount of the project funds, the participant may deduct from the total sale proceeds, the local currency equivalent of the following costs if paid by or for the account of the participant and if such costs are included in fixing the sales price of the imported commodity:

(1) Ocean freight and marine insurance; (2) fees and other related charges of banks for commercial letters of credit used to effect payment to exporters of the commodity and suppliers of related ocean freight and marine insurance; and (3) such other costs incident to the procurement, importation, handling, and sale of the commodity as may be approved by the General Sales Manager in writing; *Provided further,* That, the participant shall not deduct from the total proceeds any local currency to offset the amount of the initial payment made by the participant with the participant's own funds.

(b) *Imported commodities processed before being sold.* When the imported commodities are used in the production of a processed commodity (hereinafter called "the product"), the amount of project funds shall be computed by (1) determining the percentage of the value of the imported commodity used in the processing of the product to the total cost of the product and (2) multiplying such percentage by the total sale proceeds received, or to be received, from the sale of the product; *Provided,* That, in determining the value of the imported commodity to be included in the cost of the product, the participant may, if paid by or for the account of the participant, deduct the local currency equivalent of the following costs:

(i) Ocean freight and marine insurance; (ii) fees and other related charges of banks for commercial lettters of credit used to effect payment to exporters of the imported commodity and suppliers of related ocean freight and marine insurance; and (iii) other such costs incident to the procurement, importation, and handling of the commodity and sale of the product as may be approved by the General Sales Manager in writing; *Provided further,* That, the participant shall not deduct from the total sale proceeds any local currency to offset the amount of the initial payment made by the participant with the participant's own resources. For example: The participant is a flour miller who imports wheat for production of flour.

Proceeds from the sale of the flour milled from wheat imported under a project agreement are to be used to expand the milling capacity and for modernization of the existing facility. Proceeds from the sale of the flour which would be considered as project funds would be calculated in the following manner:

	Metric ton
Value of the imported wheat at mill location [1]	$250.00
Processing costs	50.00
Total cost of producing flour	$300.00
Value of imported wheat to total cost of flour (percentage)	83.3
Revenue received from the sale of flour	$325.00
Project funds ($325 × 83.3%)	$270.73

[1] After deduction of allowable expenses.

The participant's method of recording sales and production costs, including the value of the imported commodity and allocation of the participant's processing costs to the product produced from the imported commodity and the computation of project funds must be approved by the General Sales Manager in writing.

(c) *Sale proceeds which are less than export value.* If the net sale proceeds determined under this section are less than the U.S. dollar equivalent of the export value of the commodity, the participant shall be required to establish additional equity in the project with the participant's own resources equivalent in value to the difference between the U.S. dollar equivalent of the net sale proceeds and the export value of the commodity. The method of establishing the additional equity must be approved by the General Sales Manager in writing.

(d) *Sale proceeds which are more than export value.* If the net sale proceeds determined under this section are more than the U.S. dollar equivalent of the export value of the commodity, the entire amount of the net sale proceeds shall be used by the participant for carrying out the approved project.

(e) *Other proceeds which are considered project funds.* Where reference is made in this section to the amount which the participant receives on the sale of the imported commodity or the product processed from imported commodity, it means all considerations of any kind, including commissions and interest, which the participant is entitled to receive on such sale.

(f) *Disallowance of deductions.* The General Sales Manager shall be entitled to disallow any of the deductions or exclusions claimed by the participant and to require the participant to use the total amount of such disallowances for approved project purposes.

(g) *Market value of commodity.* Notwithstanding any other provision of GSM-301 or the project agreement, the General Sales Manager may consider the prevailing market value of the commodity in the importing country, less allowable deductions as determined by the General Sales Manager, as the amount of the project funds for the imported commodity.

§ 1492.17 Deposit of project funds.

(a) The participant shall deposit the local currency proceeds from the sale of the commodity or the products thereof in a financial institution acceptable to the General Sales Manager immediately following the receipt of such proceeds. Interest earned on such deposits shall be retained in the account.

(b) When approved in writing by the General Sales Manager, the local currency proceeds desposited in the financial institution may be converted to U.S. dollars provided such U.S. dollars remains in the account until used for carrying out the approved project.

§ 1492.18 Use of project funds.

(a) Local currencies accruing from the sale of the commodity, or the products thereof, including interest earned on such local currencies, shall only be used for carrying out the approved project.

(b) Project funds may not be used for financing costs (other than interest to be paid by the participant for the financing provided by CCC under the project agreement) guarantee fees, and administrative and overhead costs incurred by the participant in carrying out the project unless otherwise agreed to in writing by the General

Sales Manager. Such costs must be paid for by the participant with the participant's own resources.

§ 1492.19 Signing of project agreements.

The project agreement shall be signed by the participant. The General Sales Manager shall sign the project agreement on behalf on CCC.

§ 1492.20 Customs entry.

(a) The participant shall furnish evidence of customs entry into the importing country of the commodities purchased under a project agreement. The evidence shall consist of a copy of a customs entry certificate issued by a duly authorized official of the importing country showing (1) the kind and quantity of the commodity, (2) carrier identification, (3) purchase authorization number, (4) the exporter's name, and (5) exporter's sales invoice number.

(b) The customs entry certificate shall be furnished to the General Sales Manager no later than sixty (60) days after the date of export of the commodity from the United States.

§ 1492.21 Books, records, reports, and compliance policies.

(a) The participant shall maintain books and records covering all transactions relating to the project agreement. Such books and records, including pertinent documents, correspondence, memoranda and other records of the participant shall be subject to examination by the General Sales Manager or the General Sales Manager's authorized representative during normal business hours of the participant for a period of three years after the entire amount due CCC under the project agreement has been repaid.

(b) The participant shall furnish to the General Sales Manager such books, reports and information as may be required by the project agreement. Such reports shall include, but shall not be limited to, progress reports on the implementation of the project, reports covering the receipt and expenditure of project funds and financial reports.

(c) Activities under a project agreement shall be subject to such other review or investigation as the General Sales Manager deems necessary to assure compliance with the provisions of the project agreement.

(d) The participant shall cooperate with and give reasonable assistance to the General Sales Manager or the General Sales Manager's authorized representative in such review or investigation as well as the examination referred to in paragraph (a) of this section.

§ 1492.22 Warranties by the participant.

The participant represents, warrants, and undertakes as follows:

(a) The participant is a duly organized and existing legal entity under the laws applicable to it, has full authority to carry on its present business and to enter into the project agreement, and has furnished the General Sales Manager with a true copy of the documents by which it was organized.

(b) The participant has no business affiliations, i.e., ownership interest, with any firm or individual other than those disclosed in the application for a project agreement.

(c) The participant has disclosed to the General Sales Manager in writing all agreements which are material to the project agreement.

(d) The participant knows of no conditions which will interfere with, or threaten to interfere with, the participant's ability to discharge its obligations under the project agreement, and agrees to promptly inform and consult with the General Sales Manager with respect to any conditions which may arise which would have such effect.

(e) The participant shall not transfer or assign the project agreement or any of its rights thereunder, nor sell, transfer or assign its rights to any facility or any other real or personal property financed in whole or in part with project funds without the approval of the General Sales Manager.

(f) The participant shall obtain the written approval of the General Sales Manager before entering into any joint venture or any other arrangement with another entity that involves the commodities imported or to be imported under this agreement or which involves the project financed with project funds.

(g) The participant warrants that no person or selling agency has been employed or retained to solicit or secure the project agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the participant for the purpose of securing business. For breach or violation of this warranty, the General Sales Manager shall have the right, without limitation on any other rights it may have, to cancel the project agreement without liability to CCC.

(h) If the participant is required under § 1492.9 to invest in the project, the participant warrants that none of the resources invested are subject to any encumberances other than those which are disclosed in the information referred to in §§ 1492.6(a)(4) and 1492.9(b) or otherwise disclosed in writing to the General Sales Manager.

§ 1492.23 Events of default.

The occurrence of any of the following events may, at the election of the General Sales Manager, be deemed to be a default in the performance of the participant under the project agreement:

(a) Failure of the participant to make prompt and full repayment of principal or interest when due, or of any other payment required under the project agreement.

(b) A breach on the part of the participant of any obligation or warranty under the project agreement unless the General Sales Manager permits the participant to cure the breach within a specified time and the participant cures it to the satisfaction of CCC within that time.

(c) A false representation made by or on behalf of the participant in obtaining the project agreement, in the project agreement, or in the performance of the project agreement.

(d) A determination by a court of competent jurisdiction or an admission by the participant that the participant is insolvent, bankrupt, or otherwise unable to pay its debts as they become due.

§ 1492.24 Remedies of CCC in the event of default.

(a) *Termination of disbursements.* Upon the occurrence of any default set forth in § 1492.23, or upon the failure of the participant to perform any other obligation specified in the project agreement which permits the taking of the actions set forth in this § 1492.24, the General Sales Manager shall have the right to take any or all of the following actions:

(1) Decline to issue commodity purchase authorizations to the participant;

(2) Cancel, outstanding commodity purchase authorizations;

(3) Decline to enter into a commodity agreement with an exporter; and

(4) Suspend or cancel outstanding commodity agreements entered into with exporters under which CCC agreed to purchase the exporter's accounts receivable.

(b) *Change in political, economic, or monetary situation.* In the event of any material change in the political, economic, or monetary situation in the importing country which the General Sales Manager determines will have an adverse effect on the ability of the participant to fulfill its obligations under the project agreement, the General Sales Manager shall have the right to take any or all of the actions set forth in paragraph (a) of this section.

(c) *Acceleration of payment of principal.* Upon the occurrence of any default set forth in § 1492.23, the General Sales Manager shall have the right to declare all or any part of the principal and interest thereon to be immediately due and payable.

(d) *Remedy in case of contingent fee.* For breach or violation of the warranty against contingent fees which is set forth in § 1492.22(g), the General Sales Manager shall be entitled to cancel the project agreement or, at the General Sales Manager's discretion, to require the participant to pay to CCC in U.S. dollars the full amount such commission, percentage, brokerage, or contingent fee or to deduct commission, percentage, brokerage, or contingent fee from payments of principal made to CCC by the participant.

(e) *Refunds to CCC.* If the General Sales Manager determines that any disbursement of project funds is not supported by valid documentation as required by GSM-301 or the project agreement, or was at the time of disbursement in violation of the project agreement or the laws governing CCC, the participant shall pay to CCC on demand the amount of such disbursement together with the interest thereon at the interest rate specified in the project agreement from the date of such disbursement to the date payment is received by CCC. Upon receipt of such refund, CCC will deduct the amount of the refund, exclusive of interest, from the total principal outstanding and due CCC.

(f) *Force majeure.* (1) The provisions of this paragraph shall apply in lieu of any other provisions of GSM-301 or the project agreement with respect to default, delay, or failure to perform in carrying out the project if the participant maintains, and the General Sales Manager determines in writing, that such default, delay, or failure to perform on the part of the participant is due to force majeure (including but not limited to, war, insurrection, riots, fires, strikes, floods, acts of God, acts of governments and agencies thereof which the participant had no reason to anticipate) and such default, delay, or failure to perform could not have been prevented by the exercise of reasonable diligence on the part of the participant.

(2) The General Sales Manager shall have the right to take any or all actions set forth in § 1492.24(a) pending a final determination as to whether the project may be carried out. If the cause of the default, delay, or failure to perform cannot be overcome by the participant, the General Sales Manager shall be entitled to take any or all actions set forth in § 1492.24(a) and to declare all or any part of the outstanding principal due CCC to be immediately due and payable to CCC.

(g) *Other remedies.* The use by the General Sales Manager of any remedy provided for in this section shall not prevent the General Sales Manager from using any other remedy provided for in the project agreement or otherwise available at law or equity, including any sanction or penalty under criminal or civil fraud statutes.

COMMODITY AGREEMENTS

§ 1492.25 General.

(a) Sections 1492.25 to 1492.43 contain the provisions under which an exporter who makes an export sale to a participant and who has entered into a commodity agreement with CCC may, after export of the commodity, receive payment from CCC for the export value of the commodity through the purchase by CCC of the exporter's account receivable for that portion of the export value of the commodity for which CCC will provide financing. CCC will issue commodity purchase authorizations pursuant to § 1492.13 which will authorize the participant or the participant's authorized agent to purchase eligible commodities from exporters.

(b) After export of the commodity, the exporter must furnish the applicable documents and certifications required by § 1492.31 to the address specified in § 1492.43(b)(2). If the documents and certifications are in order and acceptable to CCC, CCC will purchase only that portion of the exporter's account receivable for which the exporter has complied with the applicable provisions of this regulation and will make prompt payment to the exporter.

(c) The General Sales Manager reserves the right at any time and for any reason or cause whatsoever to supplement, modify, or revoke any commodity purchase authorization, including termination of commodity agreements made pursuant to such purchase authorization.

§ 1492.26 Submission of application for a commodity agreement.

(a) An exporter shall submit a written application (e.g. letter, telex, or TWX) to enter into a commodity agreement to the office specified in § 1492.43(b). If the application is made by telephone, it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following information:

(1) Name and address of the participant and, if export is to be made to an agent of the participant, the name and address of such agent.

(2) The name of the importing country.

(3) Date of sale.

(4) Exporter's sale number.

(5) Delivery period.

(6) Kind and description of commodity.

(7) Quantity and sale contract tolerance, if applicable.

(8) The unit price and total export value of the commodity, including the value of the upward contract tolerance, if appropriate.

(9) The name and address of the intervening purchaser, if the commodity is to be sold through an intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser to the participant and that the commodity will be shipped directly to the participant or to the participant's agent in the destination country.

(10) CCC purchase authorization number.

(11) Any additional information as determined by the General Sales Manager.

(b) Upon receiving an application complying with the applicable provisions of GSM-301, the General Sales Manager shall determine whether the application shall be approved. If approved, the General Sales Manager shall cause a commodity agreement to be issued to the exporter.

(c) An application may be approved as submitted, approved with modification, or rejected by the General Sales Manager.

§ 1492.27 Commodity agreements.

(a) The commodity agreement between the exporter and CCC shall consist of the exporter's application, the General Sales Manager's written acceptance of the application and the applicable terms and conditions of GSM-301, including any amendments or supplemental announcements thereunder which are in effect at the time the commodity agreement is issued to the exporter.

(b) The commodity agreement shall provide that CCC will purchase the exporter's account receivable after export of the commodity to the participant and upon submission to CCC of the applicable documents and certifications required by § 1492.31.

(c) The commodity agreement may contain such terms and conditions, not inconsistent with GSM-301, as the General Sales Manager deems necessary in the interest of CCC.

(d) An exporter shall promptly notify the General Sales Manager when he is unable to fulfill his obligations under a commodity agreement.

§ 1492.28 Amendments to commodity agreements.

The commodity agreement may be amended provided such amendment is in conformity with GSM-301 at the time of the amendment and the amendment is determined by the General Sales Manager to be in the interest of CCC.

§ 1492.29 Export periods.

The commodity shall be exported during the export period specified in the commodity agreement and purchase authorization unless the General Sales Manager agrees to an extension of such export period.

§ 1492.30 Partial payment by the participant.

Purchase authorizations issued pursuant to § 1492.13 shall specify that the project participant make at the time of export an initial down payment representing a portion of the export value of the commodity. The amount of the initial payment will be stated in the purchase authorization. The arrangement for payment of the amount of the export value not financed by CCC is a matter for agreement between the exporter and the participant.

§ 1492.31 Documents required after export.

(a) CCC will purchase an exporter's account receivable only if the documents specified in paragraphs (b) and (c) of this section are received by the Treasurer, CCC, within forty-five (45) days, or any extension thereof granted by the Treasurer, CCC, after the date of export of the commodity.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification (GSM-301)" which shall include:

(1) A written application for disbursement showing: (i) The commodity agreement number; (ii) total export value of the commodity exported; and (iii) the value of the commodity for which payment is requested from CCC.

(2) An assignment of the account receivable, acceptable to CCC, arising from the export sale.

(3) A certification by the exporter which provides: (i) That the exporter has entered into an export sales contract with the participant to sell the commodity exported; (ii) the date of the sale; (iii) the kind, grade, quality, quantity, agreed upon price for the commodity and delivery terms of the sale; (iv) that the exporter has in the exporter's files documents evidencing the export sale contract and the obligation of the participant to the exporter for that portion of the value of the export sale for which CCC will purchase the exporter's account receivable, and that the exporter will retain and furnish such documents to CCC on demand until 3 years after the final date of export of the commodity under the export sale; (v) that the kind, grade, quality, and quantity of the commodity called for in the export sales contract and reported to CCC in the application for a commodity agreement has been exported to the participant; and (vi) that the exporter knows of no defenses to the account receivable to be assigned to CCC.

(4) A copy of the sales invoice to the participant or, if the commodity has been sold through an intervening purchaser, a copy of the intervening purchaser's sales invoice to the participant.

(c) The exporter shall furnish with the application for disbursement, the following evidence of export, as applicable:

(1) If the commodity is exported by ocean carrier, one non-negotiable copy of either (i) an onboard ocean bill of lading or (ii) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the kind and quantity of commodity, the date and place of loading the commodity, the name of the ocean carrier, the importing country, and the name and address of both the exporter and the participant, or if the export was made to an agent of the participant, the name and address of the agent.

(2) If the commodity is exported by aircraft, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the kind and quantity of commodity, date and place of loading the commodity, the name of the airline, the destination country and the name and address of both the exporter and the participant, or if export was made to an agent of the participant, the name and address of the agent.

(3) If the commodity is exported by rail or truck, one copy of the bill of lading certified by the exporter as being a true copy, an authenticated landing certificate or similar document issued by an official of the government of the importing country showing the kind and quantity of commodity, the place and date of entry into the importing country, rail or truck identification, and the name and address of both the exporter and the participant, or if export was made to an agent of the participant, the name and address of the agent.

(4) If the consignee shown in the document provided for in paragraph (c) of this section is other than the participant named in the commodity agreement, the exporter shall furnish such additional information as the Treasurer, CCC, may request to show that export was made in accordance with the instructions of, or the export sale contract with the participant.

(5) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

(6) A statement from a U.S. bank
owing that the documents required
nder the letter of credit established
the participant in favor of the ex-
rter for that portion of the export
lue of the commodity for which the
rticipant will pay with the partici-
nt's own resources have been re-
ived by the U.S. bank and such docu-
ents are in order. If a letter of credit
as not established by the participant
favor of the exporter, such other
idence acceptable to the Treasurer,
CC, showing that the participant, or
e participant's agent, has accepted
e commodity exported.

(7) If the exporter is unable to
pply documentary evidence of
port as specified in this section, the
porter may submit such other docu-
entary evidence as may be accepta-
e to the Treasurer, CCC.

(d) On receipt of the documents de-
ribed in paragraphs (b) and (c) of
is section, the Treasurer, CCC, will
omptly pay to the exporter, the
nount of the account receivable for
hich CCC will finance.

(e) If an acceptable application for
sbursement and the supporting doc-
nents described in paragraphs (b)
nd (c) of this section have not been
ceived by the Treasurer, CCC,
ithin 45 days from the date of deliv-
y, or any extension thereof, the com-
odity agreement shall be null and
id.

1492.32 Assignments.

The exporter shall not assign any
aim or rights or any amounts pay-
ble under the commodity agreement,
whole or in part, without written
pproval of the Controller, CCC.

1492.33 Covenant against contingent fees.

The exporter warrants that no
erson or selling agency has been em-
oyed or retained to solicit or secure
e commodity agreement on an
reement or understanding of a com-
ission, percentage, brokerage, or con-
ngent fee, except bona fide employ-
s or bona fide established commer-
al or selling agencies maintained by
e exporter for the purpose of secur-
g business. For breach or violation of
is warranty, the General Sales Manager shall have the right, without limitation on any other rights the General Sales Manager may have, to cancel the commodity agreement without liability to CCC.

§ 1492.34 Exporter's records and accounts.

The General Sales Manager, or the General Sales Manager's authorized representative, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until expiration of three years from the date the last export was made under the commodity agreement.

MISCELLANEOUS PROVISIONS

§ 1492.35 Use of representatives.

The participant may designate one or more representatives or agents who may be given authority to request purchase authorizations under the project agreement on behalf of the participant and to execute any and all documents required to be furnished to the General Sales Manager by the participant.

§ 1492.36 Successors to rights of CCC.

If, by operation of any law of the United States or by virtue of assignment, any agency of the Government of the United States succeeds to the rights and obligations of CCC under a project agreement, such agency shall be deemed to be CCC for purposes of the project agreement.

§ 1492.37 Applicable law.

The project agreement shall be deemed to be a contract made under the laws of the United States and shall be governed by and construed in accordance with such laws.

§ 1492.38 Notice.

Any notice, request, or communication made by the General Sales Manager, CCC, or by the participant pursuant to the project agreement or by the exporter pursuant to the commodity agreement shall be in writing and shall be deemed to have been duly made to the other party when received by such other party by hand or by mail, telegram, cable, radiogram, or other method.

§ 1492.39 Officials not to benefit.

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the project agreement with the participant or to the commodity agreement with the exporter or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the project agreement or to the commodity agreement if made with a corporation for its general benefit.

§ 1492.40 Purchasing agents employed by the participant.

Prior to entering into any agreement for the services of a United States person or firm as its agent to handle procurement of the commodities to be financed under the project agreement, the participant shall submit the name of the proposed purchasing agent and the agent agreement to the General Sales Manager for approval. The participant shall also obtain the approval of the General Sales Manager of any amendments to such agent agreement. The General Sales Manager will notify the participant in writing of its approval or disapproval of the proposed purchasing agent and of the proposed agent agreement or amendment thereto. A copy of the executed agent agreement and any amendment shall be furnished to the General Sales Manager.

§ 1492.41 Waiver.

Any failure or delay by CCC to exercise any of its rights, in whole or in part, under a project agreement or under a commodity agreement shall not constitute a waiver of any of such rights.

§ 1492.42 English language.

All documents, opinions, and certificates required to be furnished by the participant under a project agreement shall be furnished without cost to the General Sales Manager or to CCC, and, if not in the English language shall be accompanied by certified English translations.

§ 1492.43 Communications.

(a) *Project agreements.* (1) Unless otherwise provided, all written applications, requests, notifications, or communications by the participant pertaining to the project agreement shall be addressed to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) Information to be furnished in an application for a project agreement, financing terms and interest rates currently in effect may be obtained from the General Sales Manager at the address provided in paragraph (a)(1) of this section.

(3) The participant shall make payment of the principal and interest and all other payments required to be made to CCC, as agreed to by CCC and the participant, to the Treasurer, Commodity Credit Corporation, U.S. Department of Agriculture, Washington, DC 20250, unless otherwise instructed by CCC in writing.

(b) *Commodity agreements.* (1) Unless otherwise provided, all applications, both telephone and written, notifications, or communications by the exporter pertaining to the commodity agreement shall be addressed to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) The exporter shall forward documents for financing to the U.S. Department of Agriculture, Commodity Credit Corporation, P.O. Box 2415, Washington, DC 20013.

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAM (GSM-102)

Subpart A—Guaranteeing Against Defaults by Foreign Banks

GENERAL

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1493.4 Payment guarantee.

GUARANTEE RATES AND FEES

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1493.11 Assignment.
1493.12 Covenant against contingent fees.
1493.13 Officials not to benefit.
1493.14 Exporter's records and accounts.
1493.15 Communications.

AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c(f)).

Subpart A—Guaranteeing Against Defaults by Foreign Banks

SOURCE: 45 FR 64898, Oct. 1, 1980, unless otherwise noted.

GENERAL

§ 1493.1 General statement.

(a) This part contains the regulations governing the Commodity Credit Corporation (CCC) Export Credit Guarantee Program, also referred to herein as "GSM-102". Exporters of U.S. agricultural commodities usually require importers to guarantee payment of the selling price of commodities sold to such importers. The guarantee may be in the form of (1) an irrevocable foreign bank letter of credit issued in favor of the exporter who may draw drafts for the deferred payments to be presented to the foreign bank as such payments become due; or (2) an irrevocable foreign bank letter of credit which authorizes the exporter to draw drafts on a U.S. correspondent bank of the foreign bank. The exporter may assign the account receivable to a U.S. bank or financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment dates, as called for in the export credit sale. GSM-102 is designed to protect the exporter or the exporter's assignee against loss from defaults in payment due to commercial and non-commercial risks under (i) the letter of credit issued by the foreign bank to secure payments called for by the export credit sales agreement, or under (ii) the foreign bank's obligation owed to the assignee U.S. bank which is related to the letter of credit issued by the foreign bank in favor of the exporter. By transferring the risk of loss due to defaults in payment by foreign banks from the exporters and their financing institutions to CCC, GSM-102 is intended to: facilitate exportation; forestall or limit declines in exports; permit exporters to meet competition from other countries; and increase commercial exports of U.S. agricultural commodities.

(b) GSM-102 will be administered by the General Sales Manager, Foreign Agricultural Service (FAS), U.S. Department of Agriculture.

(c) The provisions of Pub. L. 83-664 (Cargo Preference Act) are not applicable to shipment of commodities covered under GSM-102 protection.

(d) GSM-102 may be supplemented by USDA announcements.

§ 1493.2 Definition of terms.

(a) "Assistant General Sales Manager" means the Assistant General Sales Manager, Export Credits, Foreign Agricultural Service, or designee of the Assistant General Sales Manager.

(b) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(c) "Date of export" means the onboard date of an ocean bill of lading or airway bill or onboard ocean carrier date of an intermodal bill of lading, or if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country.

(d) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the importer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon.

(e) "Eligible interest" means the maximum amount of interest which CCC agrees to pay the exporter as indicated in CCC's payment guarantee. Eligible interest will be shown in the payment guarantee and shall not exceed the bond equivalent rate of the most recent 52-week Treasury bill auction average which has been published by the Department of Treasury, as determined at the time CCC receives the exporter's application for a payment guarantee.

(f) "Exported value" means the value of the commodity exported under the payment guarantee basis f.a.s. or f.o.b. points of export.

(g) "Exporter" means an individual, group of individuals, partnership, corporation, association, cooperative, or any other entity that is:

(1) Financially responsible; (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States; and (3) not suspended or debarred from contracting with or participating in any program administered by CCC on the date of issuance of the payment guarantee.

(h) "FAS" means the Foreign Agricultural Service, U.S. Department of Agriculture.

(i) "Foreign bank letter of credit" means: (1) An irrevocable commercial letter of credit providing for deferred payments and issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sale requiring payment in U.S. dollars; or (2) an irrevocable commercial letter of credit issued in favor of the exporter by a CCC-approved banking institution pursuant to an export credit sales requiring payment in U.S. dollars, which is supported by a related obligation providing for deferred payment in U.S. dollars from the banking institution issuing the letter of credit to a financial institution in the United States.

(j) "Guaranteed value" means the maximum amount CCC agrees to pay the exporter under CCC's payment guarantee, exclusive of interest. The guaranteed value will be shown in the payment guarantee.

(k) "Importer" means a foreign buyer who enters into an export credit sale contract with a U.S. exporter, or with an intervening purchaser, providing for shipment directly from the United States to the foreign buyer.

(l) "Payment guarantee" means the written agreement under which CCC undertakes, for a period not exceeding 3 years after export, to protect the exporter or the exporter's assignee from losses due to defaults in payment by a foreign bank under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's obligation owed to the assignee U.S. bank related to the foreign bank's letter of credit issued in favor of the U.S. exporter.

(m) "Port value" means the total value of the export credit sale, less any discounts or allowances, basis f.a.s. or f.o.b. at U.S. points of export. Such value shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

(n) "USDA announcement" means an announcement issued by the U.S. Department of Agriculture supplementing these regulations. An announcement may include identification of eligible agricultural commodities and countries, dollar limitation of CCC exposure in a country and other information.

GUARANTEE AGAINST DEFAULTS

§ 1493.3 Application for payment guarantee.

(a) An exporter shall submit a written application (e.g., letter, telex, or TWX) for a payment guarantee to the USDA office specified in § 1493.15. An application may be made by telephone but, if so made, it must be confirmed in writing. An application shall include the full business name and address of the exporter and the following:

(1) Name of the destination country.

(2) Name and address of importer.

(3) Intervening purchaser, if any, and a statement that the commodity will be shipped directly to the foreign importer in the destination country.

(4) Date of sale.

(5) Exporter's sale number.

(6) Delivery period.

(7) Kind and description of the commodity.

(8) Quantity.

(9) Contract loading tolerance.

(10) Port value, including upward loading tolerance.

(11) Guaranteed value.

(12) Guarantee fee.

(13) The name and address of the foreign bank issuing the letter of credit.

(14) Estimated payment schedule for each shipment to be made under the export credit sale showing estimated principal payment due dates and amounts due.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications, or rejected by the Assistant General Sales Manager. In the event the application is approved, the Assistant General Sales Manager shall cause a payment guarantee to be issued in favor of the U.S. exporter.

§ 1493.4 Payment guarantee.

(a) The payment guarantee shall provide that CCC will pay the U.S. exporter or the exporter's assignee in U.S. dollars for losses resulting from the failure of the foreign bank which issues the bank letter of credit securing the export credit sale to honor drafts drawn upon it or otherwise to remit amounts properly due the exporter or the exporter's assignee.

(b) The payment guarantee shall become effective on the date(s) of export(s) of the agricultural commodities sold by the exporter to the importer and continue in force with respect to payments due during the period covered by the final payment schedule not exceeding 36 months from the dates of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for a payment guarantee or exports made after the final date for export shown on the payment guarantee or amendment thereof are ineligible for GSM-102 coverage, except where it is determined by the Assistant General Sales Manager to be in the interest of CCC.

(c) The payment guarantee may contain such terms, conditions, and limitations not inconsistent with GSM-102 as are deemed necessary or desirable by the Assistant General Sales Manager.

(d) The payment guarantee may be amended by the parties thereto, provided that such amendment is in conformity with GSM-102 at the time the amendment is approved. Amendments may include a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may be subject to an increase in the guarantee fee. The assignee may submit corrections to the payment schedule.

(e) The assignee shall not be a branch, agency or the home office of the foreign bank issuing the letter of credit.

GUARANTEE RATES AND FEES

§ 1493.5 Guarantee rates.

The payment guarantee rates will be based upon the length of the payment terms provided by the export credit sale contract, the degree of risk that CCC assumes as determined by CCC, and any other factors which CCC believes should be considered. Guarantee rates charged by CCC under GSM-102 will be available upon request from the USDA office specified in § 1493.15.

§ 1493.6 Guarantee fee.

(a) The guarantee fee will be computed on the basis of the guarantee rate and the guaranteed value.

(b) The exporter shall remit, with his written application (e.g., letter, telex, or TWX), the full amount of the fee. If the application is submitted by telephone, final approval will not be given until the fee and a written application have been received by CCC. Approval of the application will be final and refund of the guarantee fee will not be made after approval unless the Assistant General Sales Manager determines that such a refund will be in the interest of Commodity Credit Corporation.

(c) If the application for a payment guarantee is not approved or is approved only for a part of the coverage requested, a full or pro rata refund of the remittance will be made. The guarantee fee shall be made payable to CCC and mailed to the office specified in § 1493.15.

DOCUMENTS REQUIRED AFTER EXPORT

§ 1493.7 Evidence of export.

(a) The exporter shall provide a written report to the office specified in § 1493.15 within 30 calendar days following each export covered under the payment guarantee. This report shall include the following:

(1) Payment guarantee number.

(2) Date of export.

(3) Exporter's sale number.

(4) Exported value.

(5) Kind, quantity, and description of the commodity exported.

(6) Statement that the agricultural commodities of the grade, quality, and quantity called for in the exporter's sales contract with the foreign importer have been exported to the country specified in the payment guarantee.

(7) A statement that the exporter has documents evidencing the obligation of the foreign importer and that such documents will be retained until three years after the final installment due date as called for in the payment guarantee.

(8) A statement that a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported.

(9) A final payment schedule showing the payment due dates and the amounts due, separately for both the principal and the interest for which credit has been extended to the importer. If the interest to be paid is based on a variable rate, estimated interest amounts may be shown.

(b) If the report required by paragraph (a) of this section is not received by CCC within 30 calendar days after the date of the export, the payment guarantee shall become null and void with respect to defaults in payment applicable to such export. This provision may be waived by the Assistant General Sales Manager, if it is determined to be in the interest of CCC.

LOSSES CAUSED BY DEFAULTS

§ 1493.8 Notice of defaults.

(a) If the foreign bank issuing the letter of credit fails to make a remittance pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee shall notify CCC at the address indicated in § 1493.15, by phone or wire if payment is not received within 10 days of due date, or any extension thereof by the Treasurer, of Assistant Treasurer, CCC. If made by phone it must be confirmed in writing. The notice shall include the payment guarantee number, the amount due, the date of refusal to pay and reason for the default, if known.

(b) Within 30 days after the notice of default, or any extension thereof by the Treasurer, of Assistant Treasurer, CCC, the exporter or the exporter's assignee shall file a claim for loss to the Treasurer, CCC, with the following information and documents:

(1) Payment guarantee number.

(2) A certification that the scheduled payment has not been received.

(3) A copy, certified as true and correct by the exporter or the exporter's assignee, of each of the following:

(i) Foreign bank letter of credit securing the export credit sale and, if applicable, the obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter.

(ii) Ocean carrier or intermodal bill(s) of lading with onboard ocean carrier date for each shipment, or airway bill, or if exported by rail or truck, landing certificate or similar document.

(iii) Invoice(s) showing the exported value of the commodity.

(iv) An instrument, in form and substance satisfactory, to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale. If there is an intervening purchaser both the exporter's invoice to the intervening purchaser and the invoice to the foreign buyer should be included.

(c) A claim for a loss by the exporter or the exporter's assignee shall not be honored if it is made later than six months from the date of default.

§ 1493.9 Payment of loss.

(a) Upon receipt of the information and documents in good order, as required under § 1493.8, CCC shall determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee and these regulations. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will remit to the exporter or the exporter's assignee the amount of the combined principal and interest loss covered by the payment guarantee plus interest at the latest rate of the bond equivalent of the 52-week Treasury bill auction average which has been published by the Department of Treasury as of the date of default. Interest shall accrue beginning with the first day after the exporter's or the exporter's assignee's claim was received by CCC and continuing to the date payment is made by CCC.

(b) CCC's maximum liability will be limited to the lesser of (1) the guaranteed value as shown in the payment guarantee plus eligible interest or (2) the percentage of the exported value as specified in the payment guarantee plus eligible interest.

(c) CCC shall only honor claims for losses on amounts not paid as scheduled. CCC shall not honor claims for amounts due under an accelerated payment clause in the export credit sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. bank which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the interest of CCC by the Assistant General Sales Manager. Notwithstanding the foregoing, CCC, at its option may declare the entire amount of the unpaid balance plus accrued interest in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(d) Notwithstanding any other provision of the regulations set forth in this subpart to the contrary, with regard to commodities shipped to which the payment guarantee is applicable CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that:

(1) The exporter complies with the reporting requirements under § 1493.7 and (2) the exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.8.

[45 FR 64898, Oct. 1, 1980, as amended at 45 FR 78622, Nov. 26, 1980]

§ 1493.10 Recovery of losses.

(a) Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer and/or the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) In the event monies for the defaulted payment are received by the exporter or the exporter's assignee from the importer, foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC.

(c) Recoveries made by CCC from the importer or foreign bank and recoveries received by CCC from the exporter or the exporter's assignee or any other source shall be allocated by CCC to the exporter or the exporter's assignee and CCC on a pro rata basis as their respective interest may appear. The respective interest of each party shall be determined on a pro rata basis, based on the combined amount of principal, plus interest.

(d) Notwithstanding any other terms of the payment guarantee, the exporter shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under the GSM-102 Regulations.

(e) Upon payment of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee shall cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

MISCELLANEOUS PROVISIONS

§ 1493.11 Assignment.

(a) The exporter may make an assignment of the proceeds payable by CCC under the payment guarantee or the rights thereto only to a bank or other financing institution in the United States. The assignment shall cover all amounts payable under the payment guarantee not already paid and shall not be made to more than one party, and shall not be subject to further assignment, unless approved in advance by CCC. Any such assignment may be made to one party as agent or trustee for two or more parties participating in the financing.

(b) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(c) Receipt of the notice of assignment shall be acknowledged by an officer of CCC.

§ 1493.12 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the payment guarantee or that there is any agreement or understanding for commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM-102 Payment Guarantee, CCC shall have the right notwithstanding other rights provided under these regulations, to annul coverage for any commodities not yet shipped and/or to proceed against the exporter.

§ 1493.13 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

§ 1493.14 Exporter's records and accounts.

Authorized officials of USDA shall have access to and the rights to examine any pertinent books, documents, papers, and records of the exporter and/or the exporter's assignee involving transactions related to the export credit sale covered by the payment guarantee until 3 years after expiration of the coverage of the payment guarantee.

(Approved by the Office of Management and Budget under control number 0551-0004)

[45 FR 64898, Oct. 1, 1980, as amended at 47 FR 746, Jan. 7, 1982]

§ 1493.15 Communications.

Unless otherwise provided, written requests, notifications, or communications concerning the payment guarantee shall be addressed to the Assistant General Sales Manager, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250.

PART 1495—DISPOSITION OF AGRICULTURAL COMMODITIES UNDER THE CCC BARTER PROGRAM

Sec.

1495.1 General statement.
1495.2 Procurement by or for U.S. Government agencies (supply barters).
1495.3 Procurement for the national and supplemental stockpiles (stock pile barters).
1495.4 Agricultural commodities—acquisition and price.
1495.5 Eligible export destinations.
1495.6 Proof of exportation to and entry in eligible destination.
1495.7 Eligible contractors.
1495.8 Uniform barter contractual provisions.

AUTHORITY: Secs. 4(d) and (h) and 5 (d) and (f), 62 Stat. 1070, as amended; sec. 302, 68 Stat. 458, as amended; sec. 303, 68 Stat. 459, as amended; sec. 206, 70 Stat. 200, as amended; 15 U.S.C. 714b (d) and (h), 714c (d) and (f); 7 U.S.C. 1431; 7 U.S.C. 1692; 7 U.S.C. 1856.

SOURCE: 34 FR 19496, Dec. 10, 1969, unless otherwise noted.

§ 1495.1 General statement.

The barter program is administered on behalf of CCC by the Office of the Assistant Sales Manager, Barter, Export Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (hereinafter called Office of Barter). Under this program, exports of U.S. agricultural commodities are used to finance procurement of materials, equipment, goods, and services required from foreign sources by U.S. Government agencies and foreign procurement of strategic and other materials for stockpiling. The primary objectives of the barter program are: (a) To develop and expand foreign markets for U.S. farm products; (b) to improve the U.S. balance of payments position; (c) to procure strategic materials to meet stockpiling goals; and (d) to procure strategic materials in excess of stockpile goals where this is in the best interest of the United States when measured against other alternatives, such as taking foreign currencies in payment for agricultural commodities exported to foreign countries. In the formulation of barter export requirements, primary consideration is given to increasing total commercial exports of agricultural commodities from the United States.

§ 1495.2 Procurement by or for U.S. Government agencies (supply barters).

Procurement of goods or services abroad through the barter program for the use of other U.S. Government agencies is undertaken at the request of the Government agency needing the goods or services. Three types of barter arrangements may be used in making procurements for such U.S. Government agencies, i.e., supplier type, payment type, and direct-procurement type. Copies of invitations for offers under all three types of barter arrangements may be obtained from the Office of Barter.

(a) The supplier type barter arrangement involves the issuance of invitations by procurement offices of the U.S. Government agency (such as the Department of Defense), for offers from foreign suppliers of designated goods or services, both on a cash basis and on a barter basis for agricultural commodities. The lowest responsive offer on a barter basis is accepted by the procurement office unless it exceeds the lowest responsive offer on a cash basis, in which latter event CCC determines whether or not to absorb the excess cost. If an offer on a barter basis is accepted, the foreign supplier designates a U.S. firm with which CCC may enter into a barter contract for the export of the agricultural commodities representing payment for the goods or services to be supplied to the procuring agency. The foreign supplier is paid by the barter contractor for goods or services furnished to the procuring agency pursuant to arrangements between the two private parties. Under an assignment of payments made by the supplier, the procuring agency in turn pays to CCC the value of the goods or services supplied to such agency. Prior to the issuance of the invitation for offers by the procuring agency, information as to the proposed procurement is made available by the Office of Barter, for interested U.S. firms, in the Information Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC 20250.

(b) The payment type barter arrangement involves funding of certain procurements to be made abroad by other Government agencies and is initiated following request from a Government agency to CCC that it generate funds under the barter program for use in effecting such procurements abroad. CCC invites offers from eligible contractors to enter into a contract for the deposit, in accordance with the directions of the Government agency making the procurement, of funds needed to effect the procurement, and for the export, in accordance with the terms of the barter contract, of the agricultural commodities representing payment therefor. Offers are evaluated on the basis of the lowest cost to CCC and such other factors as may be stated in the invitation for offers. Notice of invitations for offers is given by USDA press release.

(c) The direct-procurement type barter arrangement involves the issuance by CCC of invitations for offers from eligible contractors to enter into a contract to supply designated goods or services and to export, in accordance with the terms of the barter contract, the agricultural commodities representing payment therefor. The invitations for such offers are issued following a request from a U.S. Government agency to CCC to undertake a procurement of designated goods or services from overseas sources. Offers are evaluated on the basis of the lowest price, delivered at destination, and other factors relating to the performance of the contract by the supplier. Notice to the public of invitations for such barter offers is given by USDA press release.

§ 1495.3 Procurement for the national and supplemental stockpiles (stock pile barters).

CCC procures for the national and supplemental stockpiles, through barter arrangements, strategic and other materials produced abroad. In the case of materials for the national stockpile, listings of the kinds and quantities of materials to be so procured are transmitted to the Office of Barter by the General Services Administration. The materials, and the quantities and qualities thereof, to be procured are determined pursuant to section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596). In the case of materials for the supplemental stockpile, the kinds and quantities to be procured are determined from time to time by the Secretary of Agriculture, from among materials which have been designated by the President as eligible for such barter procurement. In making this determination, the following factors (among others) are considered: (a) Whether such procurement will reduce the volume of more desirable barter procurements that can be accomplished; (b) whether it is more advantageous to the United States to take a useful material in exchange for agricultural commodities than to acquire additional foreign currencies for them; and (c) whether the international economic or foreign policy interests of the United States will be furthered. The Secretary of Agriculture will approve barter procurement of materials for the supplemental stockpile only when he finds it is in the best interest of the United States.

Barter procurement of foreign-produced materials for stockpiling begins with the issuance of an invitation for offers to enter into a contract for supplying the designated material and exporting an equal value of eligible U.S. agricultural products. Offers are evaluated on the basis of price and such other factors as may be stated in the invitation for offers. Notice of such invitations for offers is given by USDA press release.

§ 1495.4 Agricultural commodities—acquisition and price.

Barter contracts provide that the barter contractor will be paid in a quantity of agricultural commodities from CCC inventories having a specified total value, such agricultural commodities to be acquired from CCC by the barter contractor at prices established pursuant to published announcements of CCC, unless otherwise specified in the contract. If the barter contract involves procurements other than for the supplemental stockpile, the barter contract may contain provisions pursuant to which the barter contractor may, at his option, acquire all or any part of the agricultural commodities either from CCC inventories or from private stocks. The barter contract will either designate or provide for the designation of the agricultural commodities thus to be acquired and exported. Generally, the barter contractor may acquire from CCC inventories or from private stocks, if the contract so provides, those agricultural commodities designated in the CCC Monthly Sales List (published as a Notice in the FEDERAL REGISTER) as available or eligible in connection with barter contracts. CCC will reimburse the barter contractor for the value, determined as provided in published announcements of CCC, of those agricultural commodities exported which were acquired from private stocks. Copies of all pertinent announcements may be obtained from the Office of Barter. If the agricultural commodity acquired from private stocks is one for which a CCC export payment program is in effect, export under the barter contract generally qualifies for payment under the export payment program if such export also meets the requirements of the export payment program.

§ 1495.5 Eligible export destinations.

Agricultural commodities exported under barter contracts may be exported only to those countries which are eligible to receive barter exports. Limitations on the countries to which barter exports may go are necessary to provide reasonable assurance that such exports will increase total commercial sales and will not unduly disrupt world agricultural prices. The countries eligible to receive exports of such commodities and the conditions under which particular commodities may be exported to specified countries are set forth in each barter contract. Under barter contracts involving materials for the supplemental stockpile, the agricultural commodities must be exported, as provided in the barter contract, to the country from which the foreign-produced material originates.

§ 1495.6 Proof of exportation to and entry in eligible destination.

The barter contractor must furnish to CCC within the time specified in the contract such evidence as CCC may require showing that the agricultural commodities applied to the contract were exported to and received in a country or area designated as an eligible destination under the contract. Failure to furnish such evidence within the time specified is prima facie evidence that the commodity was exported to an ineligible destination.

§ 1495.7 Eligible contractors.

Any responsible U.S. citizen or company may qualify as a barter contractor. A partnership or other unincorporated legal entity will be considered a U.S. company if its principal place of business is in the United States and at least one of its members is a resident citizen of the United States. A corporation will be considered a U.S. company if it is organized and doing business under the laws of the United States. Provision may be made in the barter contract for the designation by the barter contractor, with approval by CCC, of an agent who, in behalf of the barter contractor, may acquire and export agricultural commodities pursuant to the terms and conditions of the contract. For the purposes of this section, "United States" means any of the 50 states, the District of Columbia, or Puerto Rico.

§ 1495.8 Uniform barter contractual provisions.

Upon acceptance of an eligible contractor's offer to enter into a contract, the Office of Barter prepares for the signature of the parties thereto a contract which sets forth the terms and conditions of the contract between CCC and the contractor. Each contract contains provisions formulated to the needs of the type of barter activity involved and the particular transactions thereunder and incorporates by reference certain uniform barter contractual provisions applicable to the type of barter activity involved. The uniform barter contractual provisions are set forth in Form CCC-111-R (for stockpile barters) and Form CCC-122 (for supply barters), copies of which may be obtained from the Office of Barter.

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

Sec.

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1496.2 Administration.
1496.3 Definitions.
1496.4 Issuance of invitations.
1496.5 Consideration of bids.
1496.6 Data to be used.
1496.7 Final contract determinations.

AUTHORITY: Secs. 201, 202 and 203, 68 Stat. 454, as amended (7 U.S.C. 1721, 1722, 1723); sec. 2, 80 Stat. 1537, as amended (7 U.S.C. 1721, 1722, 1723).

SOURCE: 44 FR 27407, May 10, 1979, unless otherwise noted.

§ 1496.1 General statement.

(a) This subpart sets forth the policies, procedures and requirements governing procurement, including allocation to U.S. ports, of processed agricultural commodities for donation under Title II, Pub. L. 480.

(b) The full implementation of this rule and its administration as described herein will require the development of new automatic data processing systems and programs in order to obtain, in a timely manner, the data and information needed for making decisions. These systems are already in the process of being developed, and it is estimated that they will be operational in approximately six months.

(c) Until the new systems are operational, the rule will be implemented to the extent possible by using present data systems and the information they generate. Although present data processing programs are out of date and do not provide the information needed to fully implement the rule, every effort will be made to consider, within the limitations of the present system, factors in addition to lowest landed cost, thus making possible the exercise of judgment in the decision making process.

§ 1496.2 Administration.

(a) The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this subpart as "ASCS") under the general supervision and direction of the Executive Vice President of CCC. The program will be administered through the office of the Deputy Administrator, Commodity Operations and the Procurement and Sales Division, ASCS, Washington, D.C.; and the Kansas City ASCS Commodity Office (KCCO), Shawnee Mission, Kansas. Procurement will be administered in accordance with requirements specified in Title 41 of the Code of Federal Regulations, "Public Contracts and Property Management, Chapter I," in USDA-1, as amended, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services," and CMO-1, as amended, "Specifications for Packaging and Packing of Dairy Products, Processed Grains, Salad Oil and Shortening."

(b) Purchases are made to fulfill commodity requests received in ASCS, Washington, D.C. from the Agency for International Development (AID), or as authorized by AID, from American Voluntary Relief Agencies, engaged in overseas relief and development, which are registered with and approved by the Advisory Committee on Voluntary Foreign Aid.

§ 1496.3 Definitions.

As used in the regulations in this subpart and in the forms and documents related thereto, the following terms shall have the meaning assigned to them in this section.

(a) "AID" means the Agency for International Development, an agency within the United States Department of State.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service, an agency within the United States Department of Agriculture.

(c) "DACO" means the Deputy Administrator, Commodity Operations, ASCS.

(d) "CCC" means Commodity Credit Corporation, a corporate agency within the United States Department of Agriculture.

(e) "Commodity Office" means the Kansas City ASCS Commodity Office, the office within ASCS which is responsible for assigned inventory management, acquisition, disposition, and related programs and activities of CCC.

(f) "F.A.S." means free alongside ship, a trade term which implies that the goods should be placed by the shipper within reach of ship's tackle in a condition fit for shipment.

(g) "Lowest Landed Cost" means the lowest combined total cost of the f.a.s. price plus ocean freight to the port of discharge.

(h) "PSD" means the Procurement and Sales Division of ASCS.

§ 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the Title II, Pub. L. 480 program. The invitations will specify the contract terms; the closing date for acceptance of bids; the date contracts will be awarded; and other pertinent information. Invitations will be issued at least 10 days prior to the deadline for submission of bids. The bid submission deadlines and contract awards will be timed so not more than one market day elapses between bid opening (bid submission deadline) and contract awards.

§ 1496.5 Consideration of bids.

(a) *Lowest landed cost.* The general principle of awarding contracts that will result in the lowest landed cost will prevail. However, the following additional factors will be considered in awarding contracts.

(b) *Availability of ocean service.* (1) Prior to receipt of offers from commodity suppliers, checks will be made of available information from sources including, but not limited to, trade journal newspapers, port publications, steamship publications, and any other available information to determine the availability of appropriate steamship service.

(2) Additional information will be gathered, if necessary by direct contact with the steamship company involved, regarding such factors as the minimum tonnage and/or revenue required to perform the service needed.

(3) Special emphasis will be placed on assuring that under normal conditions the vessels will be calling at U.S. ports to coordinate loading with cargo arrival from suppliers.

(4) Freight rates will be obtained from published ocean tariffs to make cost comparisons between various steamship companies and coastal ranges.

(5) Available service will be analyzed to ensure that the port or coastal range selected for exportation has available ocean transportation service that will provide maximum compliance with the stated policy of AID with regard to the utilization of U.S. and other flag vessels to carry commodities shipped under Title II, Pub. L. 480.

(c) *Adequacy of service.* (1) Prior to the selection of a coastal range or U.S. port from which commodities will be shipped, the ocean transportation service available may be examined to determine adequacy of service. The data utilized may include, but not necessarily be limited to, the past performance of a particular vessel or steamship line in terms of loss and/or damage to cargo when received at destination port; past performance in meeting established delivery schedules, etc. CCC may eliminate from consideration ports or coastal ranges where ocean transportation service is considered inadequate by CCC. When clearly superior service is available at another port or coastal range it may be selected over other service.

(d) *Port performance.* (1) Each port will be contacted prior to bid evaluation to determine their cargo handling capabilities for Title II, Pub. L. 480, commodities when it is reasonably expected that quantities of 1,000 tons or more may be shipped. Allocations to that port will be governed by the minimum or maximum quantities indicated.

(2) Limits of quantities purchased for delivery to a port or coastal range may also be imposed by the amount of vessel space available during the expected delivery and loading period.

(3) Prior to the final selection of a U.S. port from which commodities will be shipped, the adequacy of the port to receive, accumulate, warehouse, handle, store, and protect the cargo will be considered.

(4) Factors which will be considered in this determination will include, but are not necessarily limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices.

(5) When it is determined that the U.S. port is congested, facilities are overloaded, and a vessel would not be able to dock and load cargo without delay, or when labor disputes or lack of labor will prohibit the loading of the cargo onboard a vessel in a timely manner, another coastal range or port will be considered.

(e) *Transit time.* CCC will consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements.

§ 1496.6 Data to be used.

(a) CCC will use all available historical and current data as a basis for procurement considerations, including evaluations and decisions regarding the physical facilities and performance of ports. Heavy reliance will be placed upon current port conditions as determined from first hand observations and reports from USDA and other reliable sources.

(b) The primary source of historical data will be documents used in the normal course of conducting business. Sources include contract documents, ocean bills of lading, survey and/or outturn reports made by commercial cargo surveyors, claim settlement agreements, claim payment documents, etc. CCC will utilize only such data and make only those analyses that it believes will provide a valid measure of program performance.

§ 1496.7 Final contract determinations.

The KCCO shall be responsible for making lowest landed cost determinations. KCCO shall provide that information to an Ad Hoc Committee designated by the Administrator, ASCS, to review the lowest landed cost determinations as a result of any or all of the factors referred to herein. If, after the committee makes its review and it is recommended that contracts should be awarded based on the additional factors which would override lowest landed cost determinations, these recommendations will be presented to the Contracting Officer for a final decision. These decisions will be fully documented and explained as to the reasons the lowest landed cost was not selected.

PARTS 1497—1499 [RESERVED]

FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. For more information on incorporation by reference, see the preliminary pages of this volume.

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COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

7 CFR

Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America
P.O. Box 12285
Memphis, TN 38112
Specifications for Cotton Bale Packaging Material, 1985 .... 1427.5

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